

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF WISCONSIN

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4 UNITED STATES OF AMERICA,)
5)
6 Plaintiff,) Case No. CR 11-135
7 vs.) Milwaukee, Wisconsin
8)
9 ARVIND AHUJA,) August 9, 2012
10) 9:00 a.m.
11)
12 Defendant.)
13 -----

14 **TRANSCRIPT OF MOTION HEARING (VOLUME 1)**
15 BEFORE THE HONORABLE CHARLES N. CLEVERT, JR.
16 UNITED STATES CHIEF DISTRICT JUDGE

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22 Proceedings recorded by computerized stenography,
23 transcript produced by computer aided transcription.
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1 P R O C E E D I N G S (9:49 a.m.)

2 THE CLERK: Case No. 2011-CR-135, United States of
3 America vs. Arvind Ahuja. This matter is before the court for a
4 motions hearing. May we have the appearances, please?

09:49 5 MS. JOHNSON: Good morning, Your Honor. Tracy
6 Johnson. And with me at counsel table I have Attorney Melissa
7 Siskind and John Sullivan from the United States Department of
8 Justice, Tax Division, as well as Special Agent Geoffrey Cook of
9 IRS out of D.C.

09:50 10 THE COURT: Good morning to each of you.

11 MR. WEBB: Your Honor, Dan Webb on behalf of the
12 defendant Arvind Ahuja. Present in court with me at counsel
13 table is Dr. Ahuja sitting next to me, Tom Kirsch, and also
14 Shannon Allen. We're all at counsel table.

09:50 15 THE COURT: Greetings to you as well. Are the parties
16 prepared to proceed?

17 MS. SISKIND: Yes, Your Honor.

18 THE COURT: All right, we will start with the
19 government.

09:50 20 MS. SISKIND: Thank you, Your Honor. On the phone we
21 have Vandana Katju who will be testifying as a witness regarding
22 the admissibility of documents.

23 THE COURT: All right. Is the witness on the phone?

24 THE WITNESS: Yes, I am.

09:50 25 THE COURT: Would you swear her in, please.

1 THE CLERK: Do you solemnly swear or affirm under
2 penalty of perjury that the testimony you are about to give will
3 be the truth, the whole truth and nothing but the truth?

4 THE WITNESS: I do.

09:51 5 THE CLERK: Please state your full name for the record
6 and spell your names.

7 THE WITNESS: Vandana Katju. V-A-N-D-A-N-A. My last
8 name Katju, K-A-T-J-U.

9 MS. SISKIND: You may proceed.

10 VANDANA KATJU, GOVERNMENT WITNESS, DULY SWORN

11 DIRECT EXAMINATION

12 BY MS. SISKIND:

13 Q. Thank you, Ms. Katju. This is Melissa Siskind, we spoke on
14 the phone yesterday.

15 A. Hi, also.

16 Q. Thank you for agreeing to testify on the telephone today. I
17 just wanted to let you know that everything you say today is
18 being taken down by a court reporter, so it's very important for
19 you to speak very slowly and clearly so that he can take
09:51 20 everything down. Do you understand?

21 A. Yes.

22 Q. Can you start off just by telling the court where are you
23 from originally?

24 A. India.

09:51 25 Q. And how long have you been in the United States?

1 A. About six years.

2 Q. Where do you work right now?

3 A. HSBC.

4 Q. In what -- did you say you work at HSBC?

09:52 5 A. I work with HSBC, California, USA.

6 Q. And you just said in California?

7 A. I did.

8 Q. What job do you do for the bank right now?

9 A. I'm a branch manager.

09:52 10 Q. In what branch?

11 A. The Montgomery Street branch, in San Francisco.

12 Q. Can you repeat the name of the branch?

13 A. Montgomery Street. San Francisco.

14 Q. Montgomery Street?

09:52 15 A. That's right.

16 Q. How long have you worked at the Montgomery Street branch for
17 HSBC?

18 A. About seven months now.

19 Q. Was that seven months, Ms. Katju?

09:52 20 A. Yes. About seven months.

21 Q. Was there a time when you worked in an HSBC-India
22 representative office in Fremont, California?

23 A. I did.

24 Q. Approximately during what time period were you working in
09:53 25 the representative office in Fremont, California?

1 A. I started working in 2007, and I was there until they
2 closed.

3 Q. And approximately what year did it close?

09:53

4 A. I think it closed in 2009. It could have closed in 2010
5 also. I'm sorry, I don't --

6 Q. Prior to working in the HSBC-India representative office in
7 Fremont, California, did you also work in the representative
8 office in New York City?

9 A. I did.

09:53

10 Q. During approximately what time period did you work in that
11 office?

12 A. From March 2006 to (Indiscernible) 2007.

13 Q. And prior to coming to the New York representative office in
14 March 2006, where did you work?

09:53

15 A. I worked in HSBC-India (Indiscernible).

16 Q. Can you repeat your answer, please?

17 A. I worked at HSBC-India.

18 Q. And was that in New Delhi, India?

19 A. (Indiscernible).

09:54

20 Q. Can you repeat your response, please?

21 A. I said I was both in New Dehli (Indiscernible) for a short
22 period I worked in Mumbai.

23 Q. You primarily worked in New Dehli but you also worked in
24 Mumbai.

09:54

25 A. Yes.

1 MR. KIRSCH: I'm understanding part of it, but I'm not
2 the one that's taking it down and transcribing it. So I'm
3 concerned, Your Honor, there are going to be gaps in the
4 transcript. I'm not the court reporter so I can't speak
5 definitively on that.

6 THE REPORTER: I'm speaking up when I can't understand
7 something.

8 THE COURT: He's not shy. If he doesn't understand
9 he'll let us know. Go ahead.

09:54 10 BY MS. SISKIND:

11 Q. Now, Ms. Katju, when you were working in the representative
12 office in New York, what was your job title?

13 A. I was an AVP relationship manager.

14 Q. A what kind of a relationship manager?

09:55 15 A. Assistant vice-president and relationship manager. An NRI
16 Services Relationship Manager.

17 Q. And what are the duties of an NRI Services Relationship
18 Manager?

19 A. To manage the NRI clients of HSBC-India and to answer any
09:55 20 questions of any prospective clients of HSBC-India.

21 Q. And when you say NRI, does that stand for "non-resident
22 Indian"?

23 A. It does.

24 Q. And does that refer to clients of the bank who are of Indian
09:55 25 descent living in this case in the United States?

1 A. That's right. They could live anywhere in the world but
2 they're here in the United States.

3 THE REPORTER: Repeat that, please.

4 THE WITNESS: They could live anywhere in the world
5 but they're here in the United States.

6 BY MS. SISKIND:

7 Q. Now, when you were providing services for existing NRI
8 clients, what types of services did you provide for them?

9 A. Any banking (Indiscernible) -- so if they wanted to get
09:56 10 some information about their accounts, if they wanted to do some
11 regular maintenance on their accounts. Any information that you
12 would get if you walk into a branch in the U.S. we could provide
13 that (Indiscernible). Such as the checkbook, the balances.

14 Q. Can you repeat that, please?

09:56 15 A. Any service that you would require, that you could get if
16 you walk into a branch. For instance, if you wanted to audit a
17 checkbook for your NRI account, you wanted to get a debit card,
18 you wanted to get Internet banking, if you wanted to find out
19 something about your account such as your account balances, or
09:57 20 your interest rate. Any of those services, we could provide it.

21 Q. When you were providing services for clients did you
22 correspond with those clients by e-mail?

23 A. Yes. (Indiscernible) -- would correspond via e-mail.

24 Q. And was the use of e-mail to correspond with clients a
09:57 25 regular part of your duties as a relationship manager?

1 A. Yes.

2 Q. Would you also as relationship manager contact HSBC bankers
3 in other parts of the world on your clients' behalf?

4 A. Yes.

09:57 5 Q. Would that include bankers in India?

6 A. Yes.

7 Q. When you contacted bankers in India on your client's behalf,
8 would that be done sometimes by e-mail?

9 A. That's right.

09:57 10 Q. Would it be fair to say that e-mail was the preferred method
11 of contacting India?

12 A. Yes.

13 Q. And why is that?

14 A. Because of the time difference.

09:58 15 Q. And how about when you were contacting relationship managers
16 in other countries, would you also use e-mail to correspond with
17 those individuals?

18 A. Yes.

19 Q. And was that for the same reason, that there were time
09:58 20 differences between New York and branches in other parts of the
21 world?

22 A. Yes.

23 Q. When you would e-mail with your clients or with other HSBC
24 bankers, were those e-mails business related?

09:58 25 A. For the most part, yes.

1 Q. And would you ever e-mail with other employees within the
2 representative office?

3 A. Yes.

4 Q. What kinds of e-mails would those be?

09:58 5 A. (Indiscernible).

6 Q. I'm sorry, can you repeat your answer?

7 A. If we want to share information with each other or some work
8 that you wanted to get done and you weren't able to do it.

9 Q. Now, are you familiar with the HSBC-India computer system
09:59 10 called HUB, H-U-B?

11 A. Yes.

12 Q. Is that the system -- well, what is your familiarity with
13 that system? What is it used for?

14 A. If you walked into a branch and had a question the
09:59 15 services -- (Indiscernible) the -- to provide the information
16 it's how to get the information about -- (Indiscernible).

17 Q. Okay. I'm just going to need you to slow down when you give
18 your answer. You were talking a little too fast for the court
19 reporter to understand you.

09:59 20 A. I'll repeat that. So if you walk into an HSBC branch this
21 is the computer system that the employee customer services
22 person would look at to provide your information to you. So
23 these -- (Indiscernible) we can look at the HUB system and
24 provide the information to the customer.

10:00 25 Q. Did you say these are customer inquiry screens?

1 A. Yeah. You could call them customer inquiry screens also.

2 Q. Is this the system that HSBC-India would use to generate
3 bank statements?

4 A. I think so.

10:00 5 Q. Was this a system that you used when you were working for
6 the bank in India?

7 A. Yes.

8 Q. Was it a system that you relied upon in the course of your
9 regular duties at the bank in India?

10:00 10 A. Yes.

11 Q. Are you familiar generally with the different types of
12 information you can gather from this system?

13 A. Sometimes -- (Indiscernible) I'm sort of familiar.

14 THE REPORTER: Repeat that answer, please.

10:01 15 BY MS. SISKIND:

16 Q. We couldn't hear your answer. Could you repeat what you
17 said whether you were generally familiar with the types --

18 A. I'm generally familiar but it's been some time now. I'm
19 generally familiar with them. (Indiscernible).

10:01 20 Q. Now, when you were working in the representative office in
21 New York did you have access, direct access to this computer
22 system?

23 A. No.

24 Q. Did any HSBC employees in the United States have direct
10:01 25 access to this computer system?

1 A. No.

2 Q. If you as a relationship manager in New York needed
3 information from this system, what did you do?

4 A. We would -- if it were a simple inquiry such as can I check
10:02 5 my account balance, we would call the call center, the 24-hour
6 call center the agency has established, and get that simple
7 answer. But if it was a more complicated inquiry then I would
8 contact -- [Indiscernible].

9 Q. You really need to slow down. We're trying to have you
10:02 10 testify on the phone so you don't have to come down here, but
11 it's very hard to understand when you're speaking quickly.

12 So if you could explain again what were the
13 circumstances under which you would have them send you a print
14 screen as opposed to giving you information over the phone.

10:02 15 A. Okay. So if it was a simple inquiry, say of just the
16 customer's balance in his account, then we could call the
17 24-hour help line number and get that information over the
18 phone. But if it was a more complicated inquiry which had more
19 details associated with it, then we would get a screen shot or a
10:03 20 print of the customer's screen, the HUB screen, from which we
21 could then get that information. Could you hear me this time?

22 Q. Yes. How would you request the print screen? Would you do
23 that by phone or by e-mail or both?

24 A. Generally by e-mail, sometimes by phone.

10:03 25 Q. And then once you requested that, how did you receive the

1 print screen from India?

2 A. Almost always -- [Indiscernible] via e-mail.

3 Q. Can you repeat that, please?

4 A. As far as I remember, via e-mail. Almost always by e-mail.

10:04 5 Q. And once you received the print screen by e-mail what did
6 you do with it?

7 A. We took whatever information we required from those images
8 and I provide that information to the client.

9 Q. And how would you provide that information to the client?

10:04 10 A. We could put it into a spreadsheet to the client or any
11 format the client would like.

12 Q. Was there a particular reason why you would first receive
13 the screen shot and then provide information to the client as
14 opposed to India giving information directly to the client?

10:05 15 A. Sometimes -- we have quite a few accounts, so
16 [Indiscernible] quite a lot of information about each of these
17 CDs. [Indiscernible] And we wanted to actually see the CD
18 inquiry screen ourselves [Indiscernible] to make sure that we
19 are providing the information -- we are providing absolutely
10:05 20 accurate information. We didn't want to rely on the junior
21 staff [Indiscernible] to make a mistake. (Indiscernible).

22 Q. It was a little difficult to understand some parts of that.
23 Can you explain again why you would get the information and give
24 it to the client instead of HSBC-India giving it directly to the
10:06 25 client? And just try to speak as slowly and clearly as

1 possible.

10:06 2 A. Okay. Sometimes a client have quite a few CDs with us. For
3 example, a client has 20 CDs with us. And if we -- we would
4 prefer that HSBC-India send those screens -- the image of the
5 screens to us. We could extract the information directly from
6 those screens as the client wanted. We wanted to make sure that
7 there was no error in the information that would apply to the
8 client, so we wanted to see those screens ourselves because we
9 did not want to make an error [Indiscernible].

10:07 10 Q. And the screen shots, we've seen some --

11 THE COURT: One second. She wanted to make sure that
12 there was no error; what did you say after you said "no error"?

13 THE WITNESS: Yes.

14 THE COURT: You wanted to make sure of what?

10:07 15 THE WITNESS: I wanted to make sure there was no error
16 in the information that was supplied by HSBC-India because
17 usually the folks that would be supplying this information would
18 be junior people and we wanted to make sure, you know, that
19 there was no error in the information that was supplied to us.

10:07 20 THE COURT: Go ahead.

21 BY MS. SISKIND:

22 Q. Did you indicate that this was particularly important for
23 your high net worth clients?

24 A. Yes.

10:07 25 Q. Now, the court has seen and the parties have seen some

1 different types of screen shots in this case, some are called
2 J92 or J93, can you explain generally why there are different
3 codes for these screen shots?

10:08

4 A. [Indiscernible] as an example if you want to be -- of all
5 the CDs (Indiscernible).

6 Q. Ms. Katju, I need to stop you. The court reporter couldn't
7 understand what you just said. Can you start again, explaining
8 the difference between the different types of screen shots.

10:08

9 A. Yes. (Indiscernible) represents the kind of inquiry that
10 you're making. So the inquiry (Indiscernible).

11 Q. Would it be fair to say that there are different codes for
12 different types of inquiries that you might make from the HUB
13 system?

14 A. That's right.

10:09

15 Q. So, for example, if you wanted to know deposits, that might
16 be one code.

17 A. That's right.

18 Q. But balances might be a different code.

19 A. Yes, that's right.

10:09

20 Q. And J92 and J93 are examples of different types of screen
21 shots.

22 A. That's right.

23 MS. SISKIND: We have no further questions,
24 Your Honor.

10:09

25 THE COURT: One second.

1 MR. KIRSCH: Cross-examination, Your Honor? I
2 couldn't hear you.

3 THE COURT: Stop, please. Let's go off the record.

4 (Discussion off the record.)

10:10 5 THE COURT: We're going to take a short break. We ask
6 that the witness remain available next to the phone. We're
7 going to try a different setup and see whether or not we can
8 clarify matters a bit. All right? We'll take a short break.

9 THE BAILIFF: All rise.

10:10 10 (Recess taken at 10:10 a.m., until 10:22 a.m.)

11 THE COURT: Would the reporter please read back the
12 last question.

13 (Record read.)

14 THE COURT: Okay. One second.

10:23 15 (Brief pause.)

16 THE COURT: You may proceed.

17 MS. SISKIND: Your Honor, we have no further
18 questions.

19 MR. KIRSCH: Thank you, Your Honor.

10:23 20 CROSS-EXAMINATION

21 BY MR. KIRSCH:

22 Q. Ms. Katju, can you hear me okay on the telephone? Hello?

23 A. Hello.

24 Q. Can you hear me okay on the telephone?

10:24 25 A. Yes, I can.

1 Q. Okay. My name is Tom Kirsch, and I represent Dr. Arvind
2 Ahuja. I'm going to be asking --

3 Should I speak into that phone?

4 MR. RIEDIJK: You can, or if you can just speak
10:24 5 louder.

6 MR. KIRSCH: Well, I can just move. Do you want me to
7 --

8 MR. RIEDIJK: Yeah, that's fine.

9 BY MR. KIRSCH:

10:24 10 Q. Okay, Ms. Katju, can you hear me better now?

11 A. Yes, much better.

12 Q. Okay. I have some -- my name is Tom Kirsch, I started to
13 tell you I represent Dr. Arvind Ahuja in this case, and I have
14 some questions for you regarding the testimony that you just
10:24 15 gave and an interview statement that you gave yesterday to the
16 prosecutors that were on the phone today and also to Special
17 Agent Geoffrey Cook of the IRS, okay?

18 A. Okay.

19 Q. Now, Ms. Katju, you have never met Dr. Ahuja; is that
10:25 20 correct?

21 A. That's correct.

22 Q. You've never had a telephone conversation with him; that's
23 correct?

24 A. Correct.

10:25 25 Q. He's never authorized you in any way to speak or make any

1 statements on his behalf; that's correct, isn't it?

2 A. Correct, absolutely.

3 Q. Now, Ms. Katju, in this case the government has marked
4 numerous documents that it wants to admit as exhibits. You've
10:25 5 not seen any of those documents, have you?

6 A. No, I don't think so.

7 Q. So the e-mails that are at issue in this case that we're
8 going to be talking about here, you've never seen those
9 e-mails -- I'm sorry -- you've never seen those e-mails, have
10:25 10 you?

11 A. I seen some e-mails, a sample, I think, that HSBC-USA's
12 lawyers showed me.

13 Q. The HSBC, would that have been yesterday?

14 A. I saw some a few days back.

10:26 15 Q. Okay. And were these -- who were these e-mails to and who
16 were they from?

17 A. They were e-mail exchanges between HSBC-India and HSBC
18 representative office. I think most of the e-mails were just
19 e-mail exchanges between the two of them and e-mails sent to
10:26 20 Dr. Ahuja from the representative office.

21 Q. Do you remember whether those e-mails were marked with a
22 particular exhibit sticker?

23 A. (No response.)

24 Q. We're at somewhat of a disadvantage because I can't show you
10:26 25 anything over the phone. So I'm trying to get what you recall

1 about those particulars. I can't show you any of the
2 government's exhibits over the phone.

3 A. I understand.

4 Q. So do you remember specifically to whom those e-mails were
10:27 5 sent and who they were from? Other than just HSBC?

6 A. They were e-mail exchanges between Priti Dhanani,
7 (Indiscernible), HSBC-India, and Dr. Ahuja. What I remember.

8 Q. Do you know Dr. Ahuja's e-mail address?

9 A. I do not.

10:27 10 Q. So were you told they were e-mail exchanges between these
11 HSBC bankers and Dr. Ahuja?

12 A. No, I just -- no one told me anything. I just read the
13 e-mail, you know, that this was addressed to Dr. Ahuja,
14 addressing Dr. Ahuja.

10:27 15 Q. Okay, but you don't know if they were -- so she would write
16 Dr. Ahuja in the e-mail.

17 A. Yes. Yes.

18 Q. Do you know when the e-mails were sent?

19 A. I don't remember now.

10:28 20 Q. And what was the subject of the e-mails that were sent that
21 you reviewed?

22 A. I saw a very small sample, and they mostly had to do with
23 fixed deposits in India, that's what I remember. I could be
24 wrong. And I didn't actually review it in great detail so --

10:28 25 Q. Do you remember -- do you remember the timeframe or the

1 dates generally when these e-mails were sent?

2 A. From 2007 to -- no. The answer is no.

3 Q. So it sounds like you're just trying to -- it sounds like
4 you're just kind of guessing from the best that you can recall
10:28 5 at what you looked at --

6 A. That's right. I just browsed through it. I didn't go into
7 any great detail.

8 Q. All right. So you just browsed through them, you haven't
9 looked at them in any detail. So if I were to ask you
10:29 10 specific -- I mean, I don't know what you saw so I really can't
11 ask you specific questions about them, but it sounds like even
12 if I could you wouldn't be able to remember the specifics
13 anyway; is that right?

14 A. That's right. But yesterday I saw the screen and -- I think
10:29 15 some screen shots I saw yesterday.

16 Q. You're talking about screen shots and I'm going to come to
17 that in a minute.

18 A. Okay.

19 Q. Okay? But you're talking about something different than
10:29 20 these e-mail communications, right?

21 A. Sure, sure. Absolutely.

22 Q. Now, I think you testified on direct examination -- and, by
23 the way, you do recall giving a statement yesterday over the
24 phone to the prosecutors and to the IRS agent, right?

10:30 25 A. Yes.

1 Q. Okay. Now, you testified I think on direct examination that
2 HSBC-India maintained a 24-hour call center; is that correct?

3 A. That's right.

4 Q. And you had the option of calling the 24-hour call center in
10:30 5 India if you needed assistance with one of your customer's
6 inquiries, correct?

7 A. Correct.

8 Q. You testified I think on direct examination that if it was
9 more complicated, if there was a more complicated inquiry and it
10:30 10 wasn't a simple inquiry, you would generally request that
11 information by e-mail, correct?

12 A. Yes.

13 Q. But you were the one that independently decided whether it
14 was a simple inquiry or a complicated inquiry, correct?

10:30 15 A. If there is -- if the client required something documented,
16 then it had to go to HSBC-India because we couldn't provide that
17 document to the client and the call center obviously couldn't do
18 it either. So it had to go to HSBC-India, not by our choice but
19 by the nature of the inquiry.

10:31 20 If it was more of a verbal question, you know, if it
21 was a more complicated verbal inquiry for which, you know, we
22 wanted to make sure that the information supplied to the client
23 was absolutely accurate, then, yes, the decision, we would make
24 the decision.

10:31 25 Q. So you individually would make the decision as to whether or

1 not you were gonna pick up the phone and call the call center or
2 whether you were going to just shoot an e-mail over to
3 HSBC-India; is that correct?

4 A. Yes.

10:32 5 Q. There was no --

6 A. Under the circumstances I described to you.

7 Q. Right. Right. Under the circumstances that you sort of
8 applied on a case-by-case basis, correct?

9 A. Right. If the client wanted something documented we had to
10:32 10 reach out to HSBC-India. If the client wasn't necessarily
11 interested in it being documented but the inquiry was
12 complicated, then we refer to HSBC-India.

13 Q. Right. But you would agree with me that HSBC did not have
14 any particular policy that required you to send inquiries to
10:32 15 HSBC-India by e-mail, right?

16 A. That's right. Yes.

17 Q. You would independently make the decision and you would
18 decide whether to call the call center or to send an e-mail.

19 A. That's true. It was not a policy, it was a practice.

10:32 20 Q. It was your practice, correct?

21 A. The practice of the representative office.

22 Q. But the practice of the representatives in the office was
23 determined -- your practice might be a little bit different than
24 the practice of the person sitting next to you, right? I mean,
10:33 25 in other words, that person sitting next to you may prefer to

1 use the call center where you prefer to use e-mail on a more
2 frequent basis as a matter of convenience, correct?

3 A. (No response.)

4 Q. Does that make sense?

10:33 5 A. It makes sense. It's possible.

6 Q. Do you remember -- you remember yesterday when you gave a
7 statement to Special Agent Cook of the IRS, do you remember
8 telling him that it was preferable to use e-mail to contact
9 individuals in India due to the time differences -- I take it
10:33 10 between the United States and India -- and for convenience
11 reasons; do you remember saying that yesterday?

12 A. Yeah.

13 Q. And that's accurate, right?

14 A. Sorry?

10:33 15 Q. That is accurate, correct? What you told Agent Cook
16 yesterday is accurate?

17 A. Yeah. Yeah. Yes.

18 Q. And also you would agree with me that when you spoke with
19 your clients or your customers at HSBC, sometimes you would use
10:34 20 the telephone and sometimes you would send an e-mail, correct?

21 A. That's right, yes.

22 Q. And do you remember telling Agent Cook that you -- you
23 basically considered the information and then you made a
24 decision whichever method was more convenient would use; do you
10:34 25 remember that?

1 A. Yes.

2 Q. And also, you would make a decision based on whether or not
3 the client preferred one method or another, right?

4 A. Yes.

10:34 5 Q. So, again, there was no policy at HSBC that would require
6 you to reach out to a client via e-mail or by telephone. You
7 made decisions yourself on a case-by-case basis, correct?

8 A. Correct.

9 Q. Now, I want to go back just for a minute to the e-mails that
10:35 10 the government marked in this case as exhibits. Now, I take it
11 since you haven't -- you don't know what those e-mails are. I
12 take it you would agree with me that you could not testify that
13 there are policies at HSBC --

14 THE COURT: One second.

10:35 15 MR. KIRSCH: I'm sorry, Your Honor.

16 THE COURT: I want to get this addressed at the outset
17 and before the trial begins. I will bar the parties from asking
18 witnesses whether or not the witnesses agree with counsel.

19 That's inappropriate because, in essence, counsel is indirectly
10:35 20 testifying. Therefore, frame your question differently and in
21 the future as this case proceeds do not ask any question of a
22 witness which includes the statement as to whether or not they
23 agree with counsel. Proceed.

24 MR. KIRSCH: Yes, Your Honor.

10:35 25 BY MR. KIRSCH:

1 Q. So I'm going to restate the question, Ms. Katju. There is
2 -- I asked you some questions about the e-mails that the
3 government has marked as exhibits in this case, but --

4 A. That's right.

10:36 5 Q. -- but I take it you've not reviewed the particular
6 information that's contained within those exhibits because you
7 don't know exactly what they are, correct?

8 A. Right. Correct.

9 Q. So you can't testify to whether or not there's a policy of
10:36 10 HSBC that requires its employees to send that particular type of
11 information by e-mail, correct?

12 A. Correct.

13 Q. If you just bear with me for one minute, I want to go
14 through my notes. I have some questions for you about the
10:36 15 screen shots but I want to make sure that I've asked you all my
16 questions about the e-mail.

17 (Counsel peruses documents.)

18 BY MR. KIRSCH:

19 Q. Okay. Let me ask you some questions now, Ms. Katju, about
10:37 20 the screen shots that you testified to.

21 A. Okay.

22 Q. And this information contained in the screen shots comes
23 from a HUB, H-U-B computer system; is that correct?

24 A. That's right.

10:37 25 Q. Now, I think you testified on direct examination that you

1 did not have direct access to this computer system, correct?

2 A. Yes.

3 Q. And you told -- do you remember telling Agent Cook yesterday
4 that you don't know how data was input into this system?

10:37 5 A. That's right.

6 Q. When you requested information from India, I think you
7 testified that you had to rely on somebody in India to pull up
8 the information; is that correct?

9 A. Yes.

10:37 10 Q. And I think you explained on direct examination, but you can
11 correct me if I'm wrong, I think you explained on direct
12 examination that before -- that HSBC-India bankers did not
13 respond directly to customers of HSBC because you, who were more
14 experienced at HSBC-NRI Services in the United States, wanted to
10:38 15 make sure that the information was accurate before it was
16 provided to the customer, correct?

17 A. I did not say it like that. So -- I did not say that
18 HSBC-India doesn't -- cannot correspond or would not correspond
19 with the client. What we spoke about was why we would get this
10:38 20 screen from HSBC-India, and I said we'd get these screens
21 because we -- some of these clients had multiple CDs and
22 complicated accounts with us, and they wanted to make sure that
23 we were looking at the screen and giving them accurate
24 information.

10:39 25 Q. Right.

1 A. So, but if they wanted to they could directly correspond
2 with HSBC and there was nothing stopping them from doing that.

3 Q. Okay, thank you for that clarification. I understand now.
4 They could reach out to HSBC-India directly if they wanted to,
10:39 5 right?

6 A. That's right.

7 Q. But when they reached out to you and asked you a question,
8 you wanted to see the information that HSBC-India was providing
9 to make sure that the customer's question was being addressed,
10:39 10 correct?

11 A. That -- we wanted to see the screens themselves directly to
12 make sure that we were capturing the information that they
13 wanted correctly.

14 Q. Right, that it captures the information that the customer
10:39 15 requested, correct?

16 A. Correct.

17 Q. But you could not independently verify the accuracy of the
18 information contained on the screen shot because you didn't have
19 access to the computer, right?

10:40 20 A. We did not have access to the HUB system.

21 Q. You also I think told Agent Cook yesterday that the screen
22 shots could be confusing to interpret and to understand, so
23 sometimes you would have to look at them and then interpret them
24 for the client; is that fair to say?

10:40 25 A. We were speaking about already we would give the screen

1 shots directly to the client, and I said the normal practice was
2 that we would not give it directly to the client because it was
3 confusing to interpret for the client, so on and so forth. And
4 we would provide the information from the screen shots to the
10:40 5 client.

6 Q. I think I'm about done, but I have one other question for
7 you. You testified on direct examination that the e-mails that
8 you exchanged with HSBC bankers were for the most part work
9 related; do you recall that?

10:41 10 A. Yes.

11 Q. And I -- well, I think -- well, did you say that they were
12 for the most part work related because you would occasionally
13 exchange and send personal e-mails back and forth between some
14 of your friends that you worked with at HSBC-India -- or even
10:41 15 HSBC-United States?

16 A. Yeah, sure.

17 MR. KIRSCH: Your Honor, could I just have one minute?

18 THE COURT: Certainly.

19 (Defense counsel confer.)

10:42 20 MR. KIRSCH: Thanks.

21 BY MR. KIRSCH:

22 Q. Ms. Katju, I just have one more question for you. When you
23 were provided a screen shot or information from HSBC-India that
24 you reviewed before it was sent to the client, you had no way to
10:42 25 independently verify the accuracy gained in that information you

1 received from HSBC-India; is that correct?

2 A. They were screen shots from the HUB system which was the
3 system -- the main inquiry system for all HSBC transactions of
4 HSBC clients. So I don't understand your question.

10:43 5 Q. Okay. You testified that you did not have access to the
6 system, correct?

7 A. No. I did not have. Are you saying I couldn't -- sorry,
8 what are you asking me?

9 Q. Well, here, I'll just break it down a little bit. You
10:43 10 didn't have access to the HUB system, correct?

11 A. Correct.

12 Q. And you didn't input information into the HUB system,
13 correct?

14 A. Correct.

10:43 15 Q. And when you received information from representatives in
16 HSBC-India, you had to rely upon the information that they
17 provided you. You had no independent or other computer system
18 that you could use to verify the accuracy of the information
19 that was sent to you, correct?

10:44 20 A. Correct. But --

21 MR. KIRSCH: Your Honor, I have no further questions.

22 THE WITNESS: -- there is no other system in India.
23 That's the only system.

24 MR. KIRSCH: The HUB system.

10:44 25 THE WITNESS: That could verify the accuracy of the

1 full system. As far as I know --

2 MR. KIRSCH: Your Honor, I have no further questions
3 of Ms. Katju. Your Honor, I have no further questions.

4 THE COURT: Ms. Siskind?

10:44 5 MS. SISKIND: Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. SISKIND:

8 Q. Ms. Katju, Mr. Kirsch was asking you if you had reviewed
9 some e-mails earlier this week; do you remember that?

10:44 10 A. Can I -- I can't really hear you. Could you come closer to
11 the phone?

12 Q. Yes. Ms. Katju, Mr. Kirsch was asking you if you had
13 reviewed some e-mails; were those e-mails shown to you by
14 lawyers for the bank?

10:44 15 A. Yes.

16 Q. And when we spoke on the phone yesterday and you spoke with
17 me and my colleagues from the government, we did not ask you to
18 look at any e-mails.

19 A. That's right.

10:44 20 Q. And we were asking you generally about the practices of the
21 representative office and not about any particular transactions;
22 is that correct?

23 A. Correct, absolutely.

24 Q. Now, the HUB system, was that something you personally used
10:45 25 when you worked for the bank in India?

1 A. I did.

2 Q. When you were working in India did you rely on the entries
3 in that system in conducting your work at HSBC?

4 A. Yes.

10:45 5 Q. Did you ever have any reason to doubt the reliability of
6 that system?

7 A. No.

8 Q. And when you were working in the United States and you were
9 using screen shots that came from that system, did you ever have
10:45 10 any reason to doubt the reliability of those screen shots?

11 A. No.

12 Q. And would it be fair to say that -- did you rely on those
13 screen shots when working as a relationship manager in New York?

14 A. Yes.

10:45 15 MS. SISKIND: No further questions.

16 THE COURT: Rebuttal?

17 MR. KIRSCH: No, Your Honor. I have no further
18 questions.

19 THE COURT: There are no further questions of the
10:46 20 witness, therefore, the witness is excused. Thank you very much
21 for your testimony.

22 THE WITNESS: Thank you.

23 THE COURT: Have a good day. Even though your day got
24 started a little earlier than usual.

10:46 25 You may disconnect the call.

1 There's an additional party?

2 MR. SULLIVAN: There is an attorney on.

3 THE COURT: Oh, there's an additional party still on
4 the line? I assume there was no testimony you wished to get
10:46 5 from that attorney.

6 MR. SULLIVAN: No.

7 THE COURT: I understand there's an additional
8 witness?

9 MS. SISKIND: Yes, Your Honor.

10:46 10 THE COURT: Let's have that witness testify and then
11 we'll go back and argue.

12 MS. SISKIND: Yes, Your Honor.

13 THE COURT: Let me also put the parties on notice.
14 You are not to ask any witness whether or not it is fair to say
10:47 15 anything. What is fair is relative. And you are in effect
16 asking a witness for an opinion, which is not necessarily
17 appropriate.

18 Proceed.

19 THE CLERK: Please raise your right hand.

10:47 20 SCOTT MACIEJEWSKI, GOVERNMENT WITNESS, DULY SWORN

21 THE CLERK: Please state your full name for the record
22 and spell your name.

23 THE WITNESS: Scott Maciejewski. My first name is
24 spelled S-C-O-T-T. My last name is spelled
10:48 25 M-A-C-I-E-J-E-W-S-K-I.

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MS. SISKIND:

4 Q. Can you tell the court what you do for a living?

10:48 5 A. I manage the subpoena compliance area for HSBC Bank in the
6 Legal Paper Processing Department.

7 Q. And where is that based out of?

8 A. Buffalo, New York.

9 Q. What are your duties in that role?

10:48 10 A. We receive legal requests for records such as subpoenas or
11 authorizations, and the team that I manage goes out and requests
12 documents using various methods and provides the records to the
13 requesting party.

14 Q. Did you prepare a 902(11) records certification in this
10:48 15 case?

16 A. Yes, I did.

17 Q. What did you do prior to preparing that certification?

18 A. I was provided with records that were retrieved through
19 various means within HSBC Bank-USA, and I reviewed the records
10:48 20 and once I determined that the records were HSBC Bank-USA
21 documents I signed the certification.

22 Q. And is the attachment A that follows your certification, is
23 that a list of the records you reviewed in preparing that
24 certification?

10:49 25 A. Yes, they are.

1 Q. Can you tell the court where the various places that those
2 records were maintained?

3 A. We have computer servers that hold e-mails. We also have a
4 shared directory which is basically a server where people can
10:49 5 save records to a shared directory for access within their
6 department, or from their own computers, as well as side files
7 or hardcopies that are kept on location or at archives.

8 Q. So were the e-mail records, the records from the shared
9 drive and the hardcopy documents all maintained in the United
10:49 10 States by HSBC?

11 A. Yes, they were.

12 Q. And are all the records that are the subject of your
13 certification, were they produced to the government by HSBC
14 pursuant to one or more subpoenas?

10:50 15 A. Yes, they were.

16 Q. Does the bank have any policies relating to the retention of
17 e-mails?

18 A. Yes, we do.

19 Q. What is your understanding of that policy?

10:50 20 A. My understanding is that no later than January 1st, 2006,
21 100 percent of the e-mails that come through the server,
22 in-going and outgoing, are retained.

23 Q. Are they retained indefinitely, to your knowledge?

24 A. To my knowledge they are.

10:50 25 Q. Are you familiar with documents that have been commonly

1 referred to as screen shots?

2 A. Yes.

3 Q. Do you know whether those screen shots were maintained in
4 some form in HSBC offices here in the United States?

10:50 5 A. That is my understanding, yes.

6 Q. What is your understanding of what types of forms those
7 records were maintained in?

8 A. My understanding is that they were retained either as
9 attachments in e-mails and possibly saved to the shared drive
10:50 10 after that, as well as printed out hardcopies.

11 Q. Are you familiar with whether HSBC-India maintained one or
12 more representative offices in the United States?

13 A. Yes.

14 Q. Do you know whether employees who worked in HSBC-India
10:51 15 representative office were subject to the same policies and
16 procedures as other HSBC employees working in this country?

17 A. My understanding is that they were.

18 Q. And in preparation for your testimony today did you review a
19 Lotus Notes mail policy that the bank has?

10:51 20 A. Yes, I did.

21 Q. And is that, in fact, a policy you have signed working for
22 the bank here in this country?

23 A. Yes, it is.

24 Q. Is it your -- what is your understanding about whether that
10:51 25 Lotus Notes mail policy applied to HSBC-India employees working

1 in the representative office in New York?

2 A. It's my understanding that since they have HSBC Bank-USA
3 e-mail addresses that they are bound to those policies.

4 Q. So that policy, would that apply to anybody with an HSBC-USA
10:52 5 e-mail address?

6 A. Yes.

7 Q. Have you also reviewed in preparation for your testimony
8 today a policy entitled, "HSBC-North America e-mail policy"?

9 A. Yes.

10:52 10 Q. What is your understanding about whether that policy applied
11 to employees in HSBC-India's representative office?

12 A. It is my understanding that it is applicable to them as
13 well.

14 MS. SISKIND: No further questions, Your Honor.

10:52 15 THE COURT: Cross?

16 MR. KIRSCH: Yes, Your Honor. Your Honor, I'd like to
17 show the witness some documents. Can I approach the podium?
18 Should I do cross from the podium or would you rather have me do
19 it from here?

10:52 20 THE COURT: The podium is fine. During the trial I do
21 prefer use of the podium.

22 MR. KIRSCH: Yes, Your Honor.

23 And also, Your Honor, I don't know if the Elmo is
24 turned on. I would like the court to see some of these

10:52 25 documents but --

1 THE COURT: I can turn it on.

2 MR. KIRSCH: Okay.

3 CROSS-EXAMINATION

4 BY MR. KIRSCH:

10:52 5 Q. Good afternoon, sir.

6 A. Hello.

7 Q. Or good morning, I should say. Sir, you're employed, is it
8 correct -- I think you testified on direct examination that
9 you're employed by HSBC Bank-USA?

10:53 10 A. Yes.

11 Q. And I think you testified that you're familiar with the
12 e-mail policies; is that correct?

13 A. That's correct.

14 Q. Sir, before you came in to testify today, did you review the
10:53 15 e-mails that the government has marked as exhibits in this case?

16 A. Yes, I did.

17 Q. And you testified that those e-mails were maintained on
18 HSBC's server, correct?

19 A. Correct.

10:53 20 Q. There's no dispute about that, but did you review the
21 content of those e-mails?

22 A. No, I did not.

23 Q. So you didn't look at what the banker was -- or what one
24 banker was sending to another banker; is that fair to say?

10:53 25 A. Yes.

1 MR. KIRSCH: Your Honor, I -- if I make a mistake on a
2 question, please just --

3 THE COURT: Just proceed.

4 BY MR. KIRSCH:

10:54 5 Q. Sir, you did not review these e-mails to determine whether
6 or not the content of the e-mail was required by an HSBC policy;
7 is that correct?

8 A. Was I required?

9 Q. Correct.

10:54 10 A. I'm not sure what you mean.

11 Q. Well, in other words, if you didn't look at the e-mail to
12 determine whether the information contained in one particular
13 e-mail was required to be documented or sent by e-mail by an
14 HSBC policy, correct?

10:54 15 A. Well, I can't speak to the requirements of what someone
16 e-mails. I mean, in my position I'm not required to e-mail one
17 thing over another. What I did review on the documents was the
18 e-mail address, and I saw the H-plus e-mail address which means
19 that it was held on the HSBC Bank-USA server.

10:54 20 MR. KIRSCH: Your Honor, can I put a an e-mail on
21 the --

22 THE COURT: You may.

23 MR. KIRSCH: Thank you.

24 BY MR. KIRSCH:

10:55 25 Q. Sir, I think this is going to come up on the screen in front

1 of you. Do you see that?

2 A. Yes.

3 Q. Just so you can see. Can you see that? This has been
4 marked as Government Exhibit 50, and you can see the HSBC-NRI
10:55 5 stamp on the bottom?

6 A. Yes.

7 Q. Okay. Sir, when you reviewed this e-mail you testified you
8 looked at the header of the e-mail to see who the e-mail was
9 from; is that correct?

10 A. Yes.

11 Q. And to see who it was to, correct?

12 A. Correct.

13 Q. And you testified on your direct examination that this
14 e-mail was maintained on the HSBC server, correct?

15 A. Correct.

16 Q. But you can't testify today that the content of this e-mail
17 was required by HSBC policy, correct?

18 A. No, I cannot.

19 Q. It could have been -- it could have been the case that the
10:56 20 sender of this e-mail may have just picked up the phone and
21 asked for this information by telephone, correct?

22 A. I couldn't speak to that. I don't know.

23 Q. Well, you're not aware of any -- if that was the case,
24 you're not aware of any policy or HSBC policy that would have
10:56 25 been -- that would have prohibited that or would have been

1 violated had this person Ankush Tandon just picked up the phone
2 and called Priti Dhanani and asked for this information over the
3 phone; is that right?

10:57 4 A. I really can't speak to what a policy is for another
5 department. Can you maybe clarify the question?

6 Q. Well, sure. You just don't know what the policy is, right?

7 A. I don't know what the requirements would be for providing
8 these records.

9 Q. So you can't testify that Ankush Tandon was required to
10:57 10 request this information by e-mail.

11 A. I cannot.

12 Q. I take it, sir -- I don't want to go through all these
13 e-mails. I take it, sir, that would be the same -- your
14 testimony would be the same with respect to the other e-mails
10:57 15 that you certified in this case with respect to their content;
16 is that accurate?

17 A. That's correct.

18 MR. KIRSCH: Your Honor, can I just have one moment?

19 (Defense counsel confer.)

10:58 20 BY MR. KIRSCH:

21 Q. If you look at that e-mail right there. You notice it
22 doesn't have -- on the header it doesn't say the e-mail
23 addresses, it just says the name.

24 A. I see that.

10:58 25 Q. Can you just tell us how it was that you were able to verify

1 that that e-mail was on the HSBC server?

2 A. Yeah, from my understanding when e-mails are searched, when
3 we get a subpoena the request is made through our IT department
4 and they only search the H-plus server and respond with
10:59 5 documents that are found on the H-plus server for e-mails.

6 Q. But can you testify today under oath that that particular
7 e-mail is found and maintained on the HSBC server, or do you not
8 know that?

9 A. If it was provided with the records it was maintained on the
10:59 10 HSBC Bank-USA server.

11 Q. But you don't have any personal knowledge of that. In other
12 words, you didn't go back and actually look at the e-mail and
13 make sure that it was maintained on the HSBC server, correct?

14 A. I don't have access to the server to do that. The records
10:59 15 were provided by the IT person after a search of the HSBC
16 server. This was one of the e-mails that was provided with it.
17 So my understanding is that it was on the HSBC server based on
18 the fact that they don't have the authorization or the ability
19 to search foreign servers, they only can search the HSBC
10:59 20 Bank-USA server.

21 Q. So somebody else told you that this e-mail was provided by
22 HSBC to the government.

23 A. Our IT department.

24 Q. But your IT department told you that this particular e-mail
11:00 25 was provided by HSBC to the government?

1 A. No, not directly. Our IT department conducted the search
2 and provided the records.

3 Q. I'm just trying to get to what your personal knowledge is,
4 not to what the knowledge of your IT department is. As you sit
11:00 5 here today, can you testify under oath that this particular
6 document that you're looking at is maintained and kept on HSBC's
7 server?

8 A. I can testify that the search was conducted on the HSBC
9 server and this was one of the records that was returned.

11:00 10 Q. But you didn't conduct the search, right?

11 A. I did not, no.

12 Q. And you only know that this was one of the documents that
13 was returned because somebody told you that, right?

14 A. Correct.

11:00 15 Q. You didn't do it yourself.

16 A. No.

17 Q. Okay.

18 I think that's all the questions I have, Your Honor.
19 May I approach and get the document?

11:00 20 THE COURT: You may.

21 MR. KIRSCH: And I have no further questions,
22 Your Honor

23 MS. SISKIND: Your Honor, may I briefly inquire?

24 THE COURT: Absolutely.

11:01 25 REDIRECT EXAMINATION

1 BY MS. SISKIND:

2 Q. Sir, the process you just described whereby the IT
3 department does the search and then your office provides a
4 certification, is that how things generally work when you're
11:01 5 responding to a subpoena or providing certification?

6 A. Yes.

7 Q. So it's never the case where you're the one doing the
8 search; is that correct?

9 A. Not for e-mails, no.

11:01 10 Q. Are you at all familiar with the Bates numbers that appear
11 in the lower right-hand corner of documents that you are asked
12 to certify?

13 A. Yes.

14 Q. What is your understanding if a Bates number begins HSBC-NRI
11:01 15 and then a number, what is your understanding of where that
16 document would have been maintained?

17 A. HSBC Bank-USA.

18 MS. SISKIND: Nothing further, Your Honor.

19 THE COURT: You may step down. Thank you very much.

11:01 20 (Witness excused at 11:01 a.m.)

21 THE COURT: Is there any further need for the witness
22 today?

23 MS. SISKIND: No, the witness may be excused,
24 Your Honor.

11:02 25 THE COURT: All right. Thank you.

1 All right. Let's go back to the beginning.

2 Government may be heard.

3 MS. SISKIND: Would you prefer I approach the podium,
4 Your Honor?

11:02 5 THE COURT: Either way.

6 MS. SISKIND: I'll stand here, Your Honor.

7 I first ask Your Honor how you prefer to proceed.

8 There are several categories of documents that are now at issue.

9 It might make sense to go on a category-by-category basis to
11:02 10 address them or however --

11 THE COURT: I would prefer a category-by-category
12 basis, and then if there is any subset argument that needs to be
13 addressed we will go into that. But let's deal with the
14 categories first.

11:02 15 MS. SISKIND: Thank you, Your Honor.

16 The first large category of documents are e-mails
17 authored by HSBC employees, particularly employees in the
18 representative office in New York, namely, Priti Dhanani and
19 Ankush Tandon. The government is offering their statements in
11:03 20 these e-mails pursuant to Rule 801(d)(2)(C) under the theory
21 that they are authorized statements.

22 The government's theory of admissibility is that when
23 the defendant opened bank accounts at HSBC, he established a
24 relationship with the bank whereby bankers were authorized to
11:03 25 make statements on his behalf to carry out financial

1 transactions that he wanted to take place.

2 So, for example, if the banker is calling over to
3 India and requesting a debit card, that is a statement they're
4 authorized to make because the defendant has opened an account
11:03 5 with this bank and, in doing so, has authorized bankers to carry
6 out his banking related wishes.

7 The fact that these statements are authorized is also
8 bolstered by the fact that several of the e-mails are forwards,
9 I mean, they're letters or e-mails written by the defendant.

10 So, for example, there are e-mails that the defendant wrote to
11 Ankush Tandon I believe on two occasions requesting that the
12 credit limit associated with an HSBC-Jersey account be
13 increased. You can see in the e-mail chain that Ankush Tandon
14 then forwarded the defendant's request --

11:04 15 THE COURT: What's the exhibit number?

16 MS. SISKIND: If you look at -- Exhibits 21 and 22 are
17 those two particular examples.

18 THE COURT: Let me see if I can get the exhibits in
19 here.

20 (Brief pause.)

21 THE COURT: All right. I'm looking at 21. Go ahead.

22 MS. SISKIND: If you look at 21 and you turn to the
23 third page, Your Honor will see that there's an e-mail from the
24 defendant and you can tell it's from the defendant both because
11:05 25 of the e-mail address, aahuja3803@aol.com, and the fact that it

1 is signed "thanks, AA."

2 THE COURT: Let me interrupt to inquire of the defense
3 as to whether or not there is any disagreement with the
4 government's statement that the e-mail address shown on page 3
11:05 5 at the top, with the numbers 3803 -- with the number 3803, is
6 the defendant's e-mail address.

7 MR. KIRSCH: Yes, Your Honor, that was a shared e-mail
8 address.

9 THE COURT: All right. Go ahead.

11:06 10 MS. SISKIND: So, Your Honor, here we have the
11 defendant sending an e-mail to his banker, or one of his bankers
12 Ankush Tandon who was in the representative office in New York,
13 and requesting that Mr. Tandon increase the credit limit and pay
14 his credit card bill. The rest of the e-mail chain is Ankush
11:06 15 Tandon taking that e-mail, forwarding it along to the
16 appropriate employee. In this case it was someone associated
17 with HSBC in the Bailiwick of Jersey because this particular
18 credit card was associated with that account.

19 Mr. Tandon forwards along that request. And if you
11:06 20 look at the next e-mail in the chain, which is at the bottom of
21 page 2, he says, "As per the enclosed e-mail from the customer,
22 they have utilized their limit on the credit card. They would
23 like the outstanding amount on the credit card to be paid off
24 from their current account."

11:06 25 So an e-mail of this type, for example, it's clear

1 from the e-mail chain itself that the communication from the
2 banker has been authorized by the defendant. He went to his
3 banker, made a service related inquiry, and the banker then took
4 actions to further that inquiry and to satisfy the customer's
11:07 5 wishes.

6 The e-mail Exhibit 22 is a very similar circumstance.
7 A few months later the defendant's coming back to Ankush Tandon
8 again for a second time asking his credit limit be raised, and
9 the same pattern repeats itself where Mr. Tandon forwards that
11:07 10 request on to the appropriate banker. So these two examples,
11 it's clear from the document itself that the specific
12 communication at issue was authorized by the defendant.

13 And there's other examples as well in Exhibits 46, 61,
14 and 63, where bankers are taking not an e-mail in that case but
11:07 15 a letter with a handwritten signature from the defendant and
16 forwarding a copy of that letter to other employees to make
17 inquiries on the defendant's behalf.

18 So, for example, in Exhibit 46, Priti Dhanani is
19 forwarding a letter from the defendant in which the defendant is
11:08 20 requesting that money from his HSBC-India account be transferred
21 to another bank - HDSC, also in India. And Priti takes that
22 letter from the defendant, attaches it as a zip file to an
23 e-mail, and forwards it along to the appropriate employee in the
24 bank who could satisfy that request and do as the customer
11:08 25 asked.

1 So this would be another example of a communication
2 that is, just from the exhibit itself, is clearly authorized by
3 the defendant because he is making a request, and that is being
4 forwarded along by the banker.

11:08 5 THE COURT: All right. Let's hear from the defense.

6 MR. KIRSCH: Your Honor, I'll address -- if you'd
7 like, Your Honor, maybe what I can do is just address the
8 801(d)(2)(C) argument and then address these particular e-mails.

9 THE COURT: All right.

11:08 10 MR. KIRSCH: First of all, Your Honor, we addressed
11 this in our paper with respect to the 801(d)(2)(C) argument, but
12 I would just like to -- I'd like to summarize what we say.

13 Your Honor, the government -- in order to admit
14 something under 801(d)(2)(C), this is a very narrow rule. The
11:09 15 government must show that the declarant of the statement has
16 specific authority from in this case Dr. Ahuja to speak on the
17 specific subject matter of the statement. And Your Honor --

18 THE COURT: Let's cut to the chase with respect to the
19 exhibits that have just been discussed.

11:09 20 MR. KIRSCH: Okay.

21 THE COURT: It appears to me that Dr. Ahuja did
22 provide specific authority to the bank to communicate with
23 others with respect to the subjects that he addressed in his
24 communications. Now, tell me where I am in error.

11:09 25 MR. KIRSCH: Okay. Your Honor, I think there's two

1 problems with that.

2 Number one, Dr. Ahuja's e-mail is a declarant of the
3 defendant. He asked a question. He didn't authorize anybody to
4 say anything on his behalf at any time.

11:10 5 THE COURT: The nature of the inquiry or request by
6 your client requires some action and some statements to be
7 communicated. And it would appear to me from what was said in
8 these communications from your client that he was directing that
9 some action be taken on his behalf. And it would appear that
11:10 10 what is included in the subsequent e-mails, including a copy of
11 the materials submitted by your client, in particular, the
12 written statement and the e-mail, warranted action and action
13 was taken consistent with the directive of your client. Hence,
14 the actions of the banker involved in any such transaction would
11:11 15 appear to be action taken in a representative capacity.

16 Now, where is there a flaw in that line of reasoning?

17 MR. KIRSCH: Well, Your Honor, I think that line of
18 reasoning is what the rule itself prohibits. And Rule
19 801(d)(2)(C) specifically states the statement must be
11:11 20 considered, but does not by itself establish the defendant's --
21 or, I'm sorry, the declarant's authority under (C).

22 THE COURT: That's correct. However, what we have
23 here is not just the statement of a banker. We have, with the
24 statement of the banker, the instructions which motivated the
11:11 25 statement and the relationship that is apparent by virtue of the

1 statement given by your client; i.e., there was a
2 banker/customer relationship that existed at the moment your
3 client communicated with HSBC; there were instructions provided
4 to the banker; and there was action taken consistent with the
11:12 5 instruction by your client; and communications that set forth
6 the particulars of the request and the action that should be
7 taken in response.

8 MR. KIRSCH: Well, Your Honor, I mean, I guess I just
9 respectfully disagree with the court's --

11:12 10 THE COURT: I understand. And you're entitled to
11 disagree.

12 MR. KIRSCH: I think that the response just as well --
13 Dr. Ahuja writes: "The charge card reached its limits, can you
14 pay all of it and raise the limit? E-mail me if possible.
11:12 15 Thanks. AA." Then he says: All "will be paid in pounds.
16 Thanks, AA." The response could have been "yes."

17 I think 801 -- by the way, there's little case law on
18 801(2) -- 801(d)(2)(C), because it is a very, very narrow rule.
19 Because you can see how -- I mean, the government's first
11:13 20 argument was that Dr. Ahuja opened an account at the bank so he
21 authorized bankers to speak on his behalf. Your Honor, I would
22 be quite shocked if there were bankers at my bank that were
23 speaking on my behalf because opened --

24 THE COURT: I'm not asking whether or not you were
11:13 25 shocked. I would like to know what the reasoning is with

1 respect to your position.

2 MR. KIRSCH: I think the reasoning is the rule is very
3 narrow. The government has to show that he has authority to
4 speak -- that the declarant has the authority to speak on
5 Dr. Ahuja's behalf with respect to a specific issue. And then
6 there has to be independent evidence of it. They can't just
7 look at Dr. Ahuja's statement.

8 And that's -- Your Honor, there's going to be no HSBC
9 witnesses. They're using -- the only thing they've got is
10 Dr. Ahuja's statement. And they're saying, Your Honor, you
11 should take Dr. Ahuja's statement and make the inferences that
12 you made to determine that it's admissible under 801(2)(d)(C)
13 (sic). And the rule says that's exactly what you can't do. You
14 have to take the statement and you should consider the
15 statement, but there's got to be something more. There's got to
16 be independent evidence in addition to that particular
17 statement. Because otherwise --

18 THE COURT: There should be independent evidence with
19 respect to what aspect of your -- of the statement made by the
20 banker?

21 MR. KIRSCH: Pardon, Your Honor?

22 THE COURT: There should be independent evidence of
23 what?

24 MR. KIRSCH: There should be independent evidence that
25 Dr. Ahuja -- there should be independent evidence that Dr. Ahuja

1 gave the banker specific authority to speak on his behalf. And
2 that e-mail does not do that, it just asks a question. He's not
3 giving anyone specific authority to act on his behalf.

4 If we can take -- take 46, for instance. All the
11:15 5 government has in Exhibit 46 is a letter. Now, Your Honor, we
6 agree, this letter -- the letter on the second page, it's a
7 weight and not an admissibility issue. But this letter, this
8 letter, the government is using this letter to include the
9 statement from the bankers that is broader than the letter
11:15 10 itself.

11 I mean, here the statement says, "Enclosed is an
12 instruction for our very high net individual customer." These
13 statements are not statements -- these are not admissible under
14 801(d) (2) (C) as statements as an authorized agent.

11:15 15 THE COURT: There may be a limitation on what may be
16 disclosed to the jury with respect to the e-mail that was sent
17 in response to your client's request. So I would like to hear
18 more about that.

19 MS. SISKIND: Your Honor, the government's position is
11:16 20 that there may be a mix of types of statements and e-mails. So,
21 for example, we're looking at 46.

22 THE COURT: Precisely.

23 MS. SISKIND: When she says, "Requests you to please
24 do the needful and courier the draft ASAP," the government
11:16 25 submits that is the quintessential authorized statement here

1 because she is quoting on request. Anything else in that e-mail
2 the government is not offering for the truth of the matter
3 asserted. It provides context to the authorized statements.

4 For example, when she says "enclosed is an instruction
11:16 5 from a very high net worth individual customer," that is her
6 trying to explain to the bank why it's important that this
7 request be taken care of. Whether or not it's important we're
8 not offering for the truth of the matter asserted, it just gives
9 context to the rest of her statements.

11:17 10 THE COURT: I understand that. So you would agree
11 with the defense that any editorialization by the banker with
12 respect to the request made by the defendant would not be
13 admissible for the truth of the matter asserted and would --
14 should be limited or perhaps redacted.

11:17 15 MS. SISKIND: Your Honor, we would object to a
16 redaction. We would not object to some kind of limitation where
17 it is only being offered for limited purpose and not for the
18 truth of the matter asserted. But in this case Priti Dhanani is
19 one of the alleged co-conspirators in the indictment. Certain
11:17 20 things that she may have said while not being offered for the
21 truth of the matter asserted, do go to her state of mind with
22 respect to the conspiracy. So there may be alternative bases
23 other than authorized statements for which those sentences
24 should be allowed to be shown to the jury.

11:18 25 THE COURT: All right. So you would certainly be

1 suggesting that it is the government's intention to demonstrate
2 prior to offering this exhibit or series of exhibits evidence
3 that Priti Dhanani was a co-conspirator.

4 MS. SISKIND: Yes, Your Honor. And that's part of the
5 Santiago proffer that we filed is all of the totality of the
6 circumstances that establish her membership in the conspiracy.

7 THE COURT: All right. The defense has the floor.

8 MR. KIRSCH: Your Honor, as an initial matter, we
9 addressed the Santiago proffer. Your Honor, there is absolutely
10 no evidence in this case, none whatsoever, that Priti Dhanani or
11 Ankush Tandon knew of any object of a conspiracy. The
12 government's argument is that they knew that Dr. Ahuja wanted to
13 conceal his accounts. There's not one document in the case and
14 there's not one witness that will testify to that. Not one.

15 And so, there's a major problem in this case with a Santiago
16 proffer, I believe, because if the government is allowed to
17 submit statements that are not admissible under any other rule
18 and admit them under 801(d)(2)(E), they cannot establish -- they
19 have not set forth in their Santiago proffer any evidence that
20 they will admit at trial to establish that Priti Dhanani or
21 Ankush Tandon agreed with Dr. Ahuja to commit or to defraud the
22 IRS. None. So that's a problem.

23 THE COURT: All right. We will definitely get into
24 the Santiago issue a little more after we finish discussing the
25 basic admissibility issue.

1 MR. KIRSCH: Okay. But, Your Honor, I think that if
2 you just take -- take Exhibit 46 that we're looking at, and the
3 government has a letter, and the letter is addressed to the
4 manager at HSBC Services NRI. Now, the government wants to put
11:20 5 in an e-mail. The e-mail has a header on it. It's -- the
6 letter, by the way, isn't dated. If you notice, the letter
7 itself, there's no date on the letter. But the government then
8 wants to use this header on the e-mail, "from Priti," who
9 there's absolutely no evidence whatsoever that Dr. Ahuja
11:20 10 authorized Priti Dhanani to say a single word on his behalf.
11 None.

12 The government wants to use this header to argue that
13 Priti Dhanani, who they allege was a member of a co-conspiracy,
14 was authorized to speak on Dr. Ahuja's behalf, and that she was
11:20 15 authorized to send an e-mail to NRI Termination, MDR, and these
16 other people that I have no idea who they are, Mayur Patni, I
17 have no idea where they are, I have no idea what they do. I
18 mean, this is so far removed from an 801(2)(d)(C) (sic) --

19 Like, the government cited the case Michaels vs.
11:21 20 Michaels. In that case it was a broker. You're selling your
21 house and you engage a broker to speak on your behalf to
22 potential buyers of the house. That's 801(2)(d)(C) (sic). You
23 know who you're authorizing to speak on your behalf. You know
24 exactly what they're going to say. They're going to try to sell
11:21 25 your house. They're going to talk about the number of bedrooms

1 and the new floors and the new roof. They're authorized to
2 speak on your behalf. Here, the government is taking a letter,
3 which is their only evidence, so they have no independent
4 evidence whatsoever, they're taking a letter --

11:21 5 THE COURT: Are you saying there is no evidence that
6 the government will be offering with respect to the relationship
7 that -- any relationship your client may have had with HSBC and
8 employees thereof?

9 MR. KIRSCH: No, no. I'm not saying that. They will
11:21 10 establish that my client had a banking relationship with HSBC.
11 But that is way too broad under the rule. The rule requires
12 that the individual, the declarant, is authorized to speak on
13 the specific subject matter. So the rule prohibits the
14 government from saying, well, he had a banking relationship with
11:22 15 HSBC, so HSBC was authorized to speak on his behalf as his agent
16 on all banking matters. It's gotta be examined on a
17 case-by-case basis.

18 THE COURT: And here we have a specific request with
19 regard to Exhibit Number 46. That is the letter addressed to
11:22 20 the manager, HSBC-NRI Services, with the subject "withdrawal of
21 NRE deposits" in a particular account.

22 By the way, is it the intention of the parties to have
23 the account numbers redacted for the purpose of this trial?

24 MR. KIRSCH: Well, Your Honor, the government can
11:23 25 speak to this.

1 MS. SISKIND: Your Honor, we intend to, in the
2 Sanction program which will display the exhibits electronically,
3 to have account numbers, addresses and all other necessary
4 things redacted before trial. The last four digits as required
5 by the redaction policy.

6 THE COURT: Is that the understanding of the defense
7 as well?

8 MR. KIRSCH: Pardon?

9 THE COURT: Is that the understanding of the defense
10 as well?

11 MR. KIRSCH: Well, Your Honor, it is, although there
12 are certain things that I think that we're not going to be able
13 to redact. Like address and things like that are going to be
14 important in this case on certain documents. But it all has to
15 do with the defendant. So, you know, we're not gonna be showing
16 other people's addresses, other than businesses.

17 THE COURT: Well, if the defendant wants to disclose
18 the particulars of his addresses and so forth, that's certainly
19 within his province.

20 MR. KIRSCH: Thank you, Your Honor.

21 THE COURT: But I do want the parties to be sensitive
22 to the need to redact information and there are some
23 instructions on your tables under the glass.

24 MR. KIRSCH: Thank you, Your Honor.

25 So, Your Honor, with respect to this statement,

1 statement number 46, if you look at the language, the plain
2 language of 801(d)(2)(C), states that: "The statement is
3 offered against an opposing party," here Dr. Ahuja, "and was
4 made by a person whom the party authorized to make a statement
5 on the subject."

6 This letter -- this is the whole reason they have to
7 have independent evidence. This letter -- nowhere in this
8 letter does it authorize Priti Dhanani. It's not addressed to
9 Priti Dhanani. We don't know if it was sent to Priti Dhanani.
10 We don't know who it was sent to. We don't know when it was
11 sent. We don't know any of those things. This letter could
12 have been sent in 2002. And the government wants to use the
13 header of this e-mail to make an argument that Dr. Ahuja
14 authorized Priti Dhanani to speak to Mayur Patni and these other
15 people on the e-mail on Thursday, February 7th, 2008 with
16 respect to this particular e-mail. That's exactly what the rule
17 prohibits them from doing. They can use the letter. We agree
18 with that. That's a weight issue, not an admissibility issue.
19 The e-mail, though, is not admissible under 801(d)(2)(C).

20 THE COURT: What additional information, if any, does
21 the government have with respect to Priti Dhanani as it relates
22 to this case?

23 MS. SISKIND: Your Honor, the government will
24 establish that she was employed in the HSBC-India representative
25 office in New York.

1 And Your Honor heard testimony today from Vandana
2 Katju who also worked in that office. And she told the court
3 about the duties of employees in that office, including
4 responding to customer inquiries. She gave some examples of if
5 a customer called asking for a checkbook or a debit card or
6 account information, those were all of the types of things that
7 relationship managers in that office would do.

8 Ms. Katju also testified today that when a customer
9 made those kind of inquiries, the relationship manager would in
10 turn go to other HSBC employees, whether they be in India or in
11 other countries, in order to fulfill those requests. And the
12 example we talked the most about today were the screen shots,
13 where if a customer had a question about their balance that
14 would cause the relationship manager in New York to contact
15 India in order to obtain information.

16 And so the government submits that the testimony the
17 court has heard today, combined with the evidence that
18 Ms. Dhanani was employed in the HSBC representative office in
19 New York, establishes that when relationship managers in New
20 York were making inquiries they were doing so at their
21 customer's direction and on their behalf.

22 THE COURT: And so is it your intention to offer
23 testimony that Priti R. Dhanani was a relationship manager?

24 MS. SISKIND: Your Honor, we can put into evidence her
25 personnel file or parts thereof that establish her job title.

1 Just her signature block on the e-mail has her title as
2 assistant vice-president, which I believe Vandana Katju
3 testified today she held that same title, she said AVP,
4 assistant vice-president. Which would suggest that
11:27 5 Ms. Dhanani's job duties were the same or similar to Ms. Katju's
6 duties.

7 THE COURT: All right.

8 MS. SISKIND: And, Your Honor, I just want to point
9 out also, the Michaels case which we cite in our papers and
11:27 10 Mr. Kirsch alluded to, is a helpful case in the circumstance.
11 Because in that case, one of the parties contracted with a
12 broker to help sell company assets. The broker then went out
13 and sent various communications to different prospective buyers.
14 And the question was, were those communications authorized. And
11:27 15 the Seventh Circuit found that they were authorized by nature of
16 the relationship. The person had hired a broker and, in doing
17 so, necessarily authorized that broker to go out and make
18 communications regarding the sales of business assets.

19 The court didn't require a finding that each
11:28 20 individual communication was separately authorized. The court
21 instead found that an overall relationship was created when a
22 person hired the sales broker, and it was that relationship that
23 led to the authorization of these communications. I think that
24 is helpful here, particularly in light of Ms. Katju's testimony
11:28 25 today of all the different types of things that relationship

1 managers would do for their clients.

2 THE COURT: All right. I'm satisfied generally that
3 there was a banker/customer relationship, as I previously said;
4 that by virtue of that relationship the HSBC Bank and its
11:28 5 employees were required to engage in transactions in accordance
6 with the instructions of the defendant customer.

7 As it relates to the exhibits we have discussed, and
8 in particular 46, 61, 63, the court is satisfied that these
9 exhibits -- these e-mails are admissible. The requirements for
11:29 10 admissibility on the basis of what I have heard have been met.

11 Now, there may be instances where statements are
12 included in these e-mails generated by the bank which may
13 warrant redaction. So I'm not making a blanket ruling with
14 respect to whether or not some portion of an e-mail may require
11:30 15 redaction, other than to mask account information.

16 However, it is certainly appropriate that the
17 parties -- that the defense be heard with respect to any
18 particular e-mail where there is extraneous information that may
19 be in the document. So I'm placing the onus on you to bring to
11:30 20 my attention any particular e-mail where there is something that
21 is stated by the communicating employee, and in particular --
22 especially Priti R. Dhanani, that may warrant an objection.
23 But, generally speaking, it appears to me that Priti Dhanani's
24 e-mails in response to instructions of the defendant are
11:31 25 admissible.

1 MR. KIRSCH: Your Honor, could I -- I don't want to
2 argue, can I just make one observation for the record?

3 THE COURT: You can certainly make your observation to
4 preserve your rights.

11:31 5 MR. KIRSCH: Thank you, Your Honor.

6 Your Honor, Exhibit Number 63 the court ruled on.
7 Exhibit 63 is not one that we discussed. In Exhibit 63 there is
8 not a single statement from Dr. Ahuja contained on that e-mail.
9 Not one. And the government's offering that under 801(d)(2)(C),
10 and I think that's improper, and the court just referenced that.

11 THE COURT: Let me look at 63.

12 (Brief pause.)

13 THE COURT: I only see one page. It refers to a
14 letter from Dr. Ahuja, but I do not see that letter.

11:32 15 MS. SISKIND: Your Honor, if you flip to the previous
16 exhibit, Exhibit 62, the letter is in Exhibit 62.

17 THE COURT: Does the defendant wish to comment?

18 MR. KIRSCH: Your Honor, I didn't realize that they
19 had done it this way with some exhibits and not with others. I
20 just -- the only thing I want to comment on, Your Honor, is we
21 would request, on Exhibit 62, as you can see there's a date,
22 September 21, 2009?

23 THE COURT: Yes.

24 MR. KIRSCH: The e-mails are sent relatively close to
11:33 25 the date.

1 THE COURT: And I do note the -- at the bottom of the
2 exhibit --

3 MR. KIRSCH: Right.

4 THE COURT: -- it says HSBC-NRI 0008289, on 62, and
11:33 5 HSBC-NRI 0008288. So these certainly are sequential exhibits as
6 far as the Bates numbering system is concerned. And I assume
7 for the purpose of our discussion that these materials are among
8 those that are submitted by HSBC in response to the subpoena and
9 are part of the materials that have been certified as having
11:34 10 been prepared and maintained in the ordinary course of HSBC's
11 business.

12 MR. KIRSCH: Your Honor, I -- well, I agree with the
13 bank's numbering and all that sort of stuff. But I just want to
14 point out to the court -- and these are the types of things that
11:34 15 I think we'll ask to be redacted, including like the date of the
16 last e-mail that we discussed where the authorized statement was
17 not dated. The government has no independent evidence as to
18 when that letter was sent.

19 And like with respect to this letter, Your Honor --
11:35 20 and this is the problem with these exhibits. If you look at the
21 letter -- the letter is -- it's to HSBC-Jersey. "Dear sir."
22 And then it says "account closure requested" and it lists an
23 account number and a customer I.D. And then it says "will you
24 please" -- "with reference, please close the account,"
11:35 25 et cetera, et cetera.

1 And then the next page is a statement from Priti
2 Dhanani in the top e-mail saying "He has requested to close his
3 Jersey account."

4 But there's no evidence -- the government will have no
11:35 5 evidence whatsoever that that account number is a Jersey
6 account. And so the government is bootstrapping its entire case
7 through inadmissible hearsay by trying to get in documents, to
8 get in documents that should be admissible from very, very
9 narrow purposes, and then argue very broad propositions from
11:35 10 those documents, such as the dates that letters were sent.
11 They're not on the letter, but the government's going to use
12 another piece of hearsay evidence to try to argue when it was
13 sent.

14 The government's gonna use hearsay evidence to try to
11:36 15 argue what certain possible or alleged statements by Dr. Ahuja
16 meant. And that's exactly what they can't do.

17 And they say it's context and all that sort of stuff.
18 But, Your Honor, if it's context they can strike it. It's not
19 context. The only reason it's relevant whatsoever is for the
11:36 20 truth of the statement, and that's how they're going to argue it
21 and that's how they're going to present it to the jury.

22 THE COURT: Does the government wish to reply?

23 MS. SISKIND: Your Honor, just on the matter of
24 proving it's a Jersey account number. The letter in Exhibit 62,
11:36 25 he's writing a letter to HSBC-Jersey regarding a particular

1 account number. The reasonable inference to be drawn from that
2 is that is an HSBC-Jersey account number. If it wasn't, why
3 would he be directing this letter to HSBC-Jersey?

4 THE COURT: Well, let's -- I do see in the header it
5 says, the account manager, HSBC-Jersey.

6 MR. KIRSCH: I agree, Your Honor. I see that. We
7 don't know who drafted this letter. Okay? And it's --

8 THE COURT: When you say who drafted "this" letter,
9 are you referring to Exhibit 62 or are you referring to 63?

10 MR. KIRSCH: 62, Your Honor. But it's -- see, and
11 this is the issue. If you go back to the last exhibit we were
12 talking about, it's addressed to HSBC-NRI Services manager or
13 something like that.

14 So the government wants to disregard the heading on
15 that letter and they want to use the heading on the e-mail to
16 argue, well, it was sent to these people in India so Dr. Ahuja
17 must have known his accounts were in India. And here they say,
18 oh, now we've got the header. So, I mean, it's just such a
19 totally inconsistent position as to how they want to use these
20 documents and these e-mails without -- Your Honor, they're not
21 gonna -- by the way, these witnesses that testified today over
22 the telephone, they're not testifying at trial. The government
23 is not going to call one single witness from HSBC. Not one.
24 And that is a -- I mean, well, with respect to the Santiago
25 proffer and with respect to these exhibits, they're not going to

1 call one HSBC witness. Their whole case is gonna be based on
2 their interpretation of these e-mails that they want to get in
3 through hearsay exceptions. So they are trying to convict
4 Dr. Ahuja based on their interpretation and argument of these
11:38 5 e-mails. That's it. They have no witnesses, not one that's
6 gonna testify to these e-mails, and that they mean what the
7 government says they mean.

8 And so, I think in this case we have to be
9 particularly careful considering the evidence that the
11:38 10 government's gonna put on at trial how the government is able to
11 use and argue these exhibits, and they shouldn't be able to use
12 them in an inconsistent manner.

13 THE COURT: What does the government say about the
14 foundation for admission of the exhibits in general and the
11:38 15 comment of the defense that the government will not be calling
16 anyone from HSBC to testify respecting the matters that were
17 heard today?

18 MS. SISKIND: Your Honor, the government has first not
19 made a final decision yet. The defense just amended their
11:39 20 witness list yesterday. The government has yet to make a final
21 decision on what the final exhibit list and final witness list
22 is gonna look like.

23 But I think part of what Mr. Kirsch is saying is
24 there's a difference between whether the document comes in and
11:39 25 then what it means. And certainly in any trial the sides are

1 going to have different interpretations of the import of a
2 particular document. And that's not an issue that relates to
3 admissibility, it's an issue that's dealt with by the parties in
4 their arguments to the jury. So that's -- while certainly a
11:39 5 particular document, the parties will interpret its meaning in
6 different ways, that doesn't necessarily mean a document is
7 inadmissible.

8 THE COURT: As I stated earlier, I'm satisfied that
9 Exhibit 63 is admissible inasmuch as there is a foundation for
11:40 10 admissibility as discussed here today, particularly in view of
11 what is set forth in Exhibit Number 62 which is addressed to the
12 manager of HSBC-Jersey and dated September 21st, 2009, above the
13 signature of what is purported to be the defendant Arvind Ahuja.

14 Let's move to the next category.

11:40 15 One second.

16 (Brief pause.)

17 THE COURT: We will take a short break in this case.
18 I want to return -- I have another matter that's scheduled at
19 11:30. I want to see what's going on there. We'll resume as
11:41 20 soon as we can.

21 (Recess taken at 11:41 a.m., until 12:09 p.m.)

22 THE COURT: Before we address additional issues I'd
23 like to get some guidance from the parties. Can you project at
24 this stage how much additional time you think you will need to
12:10 25 conclude your arguments? We'll start with the government.

1 MS. SISKIND: Thank you, Your Honor. So far we've
2 addressed five documents in the hearing. By my count, I might
3 be off by one or two, I think there are still 39 more documents
4 that have not been addressed. Many of those documents the
12:10 5 government is moving to admit, the statements of bankers, under
6 801(d)(2)(C). And the arguments we've already made regarding
7 the relationship between Dr. Ahuja and the bank apply to those
8 e-mails as well.

9 I think the defense wants to go on an e-mail by e-mail
12:10 10 basis. We would suggest that the court's finding already that
11 there was a relationship between the defendant and the bank, and
12 that bankers made statements as part of that relationship, would
13 cover many of the contested e-mails that we still haven't talked
14 about.

12:10 15 Other than those banker e-mails the only things we're
16 still talking about are two e-mails authored by Ramit Bhasin who
17 is a relative of the defendant's who is not a relationship
18 manager in the representative office. We're talking about three
19 documents that were maintained in the records of Kolb+Co which
12:11 20 is the defendant's accountant. And then -- and that just
21 addresses some of the hearsay issues. And then we can also talk
22 about the screen shots which you've heard a lot about today,
23 Your Honor, and the reliability and the method of those
24 creations.

12:11 25 So, a lot of it I think is going to depend on whether

1 we keep going on a category basis or have to start talking
2 e-mail by e-mail.

3 THE COURT: All right. Let me hear from the defense.

4 MR. KIRSCH: Your Honor, I just -- I think it's going
5 to be longer than the government thinks because I guess I
6 respectfully disagree with the government's characterization of
7 the court's ruling. And I think what the government did with
8 these 802(d)(2)(C) e-mails is they cherry-picked basically the
9 easiest ones and they said in these e-mails there's a specific
10 directive from Dr. Ahuja, and then carried out the directive.

11 I think the court ruled for that basis those documents
12 were admissible. The court did not rule that any statement that
13 any banker ever made that was purportedly on behalf of
14 Dr. Ahuja, even if Dr. Ahuja is nowhere on the e-mail or on the
15 document or making any request whatsoever, is admissible under
16 801(2)(d)(C) (sic).

17 THE COURT: You are correct.

18 MR. KIRSCH: I think that's what the government wants
19 to argue, and I respectfully submit they can't do that. They
20 can't bootstrap the court's ruling into these other e-mails and
21 that's why I think we'll have to address these other e-mails.

22 THE COURT: Would it be helpful if you had an
23 opportunity to go back and look at the various additional
24 exhibits to see if there is any one or more which would be
25 covered by the court's initial ruling?

1 MR. KIRSCH: It would be, Your Honor. But I think --
2 I think that there are only about three of those. And, I mean,
3 I can tell you, like, for instance, I guess 29 would be covered.
4 Subject to our objection, 29 I think would be covered by the
12:13 5 court's previous ruling. That's an e-mail from a shared e-mail
6 address that Dr. Ahuja used, and then there is a response from
7 the banker. So I think that would be covered under the court's
8 prior ruling. But I think -- that's 29, I think there are only
9 a -- like one or two. There might only be one more of that. I
10 think that may be the only one, Your Honor. I guess the
11 government would know better, but I think that's the only other
12 one that's in the same category as those five e-mails that the
13 government pointed out to you where Dr. Ahuja makes a specific
14 request and then the bank responds, you know, where you have
12:14 15 Dr. Ahuja making the request.

16 THE COURT: With all of that said, how much time do
17 you think you will need to address the pending issues?

18 MR. KIRSCH: Your Honor, I just --

19 THE COURT: You can't venture a guess.

12:14 20 MR. KIRSCH: But I think it's going to take hours. I
21 think that the 801(d)(2)(C) issue is probably the most
22 straightforward issue.

23 We have the Santiago issue which is a big issue. We
24 have the 803(6) issue which is a big issue. And then,
12:14 25 Your Honor, we have the -- we had the motion in limine, the

1 Ramit Bhasin motion in limine. And we have the jury --

2 Now, by the way, the court may be happy to hear this,
3 we've worked hard with the government over the past few days on
4 these jury questionnaires, and we have reached a lot of
5 agreement to present to the court on that issue. But there are
6 still some issues with respect to jury selection that we need to
7 cover.

8 THE COURT: That's why I thought we should deal with
9 the jury issue later rather than at the beginning of the
10 hearing. But it is apparent from what the parties are saying
11 that we cannot easily get the issues that remain in the limited
12 time we have available today. Hence, it appears to me that we
13 will either have to continue tomorrow, or on another date which
14 would necessarily require that the trial be adjourned.

15 MR. WEBB: Your Honor, one other possibility I might
16 suggest. I know we're picking the jury next Monday. If you
17 wanted -- if the government -- we could pick the jury and then
18 come back and argue a lot of these evidentiary issues and do
19 opening statements starting Tuesday. So you could pick up a
20 half a day maybe Monday afternoon. I'm just trying to come up
21 with time.

22 THE COURT: I understand that but I'm also concerned
23 about jeopardy.

24 MR. WEBB: Fine. We understand.

25 THE COURT: Because it would appear to me that there

1 are some issues related to whether or not the government would
2 be in a position to call witnesses or would call witnesses whose
3 testimony will have a bearing on the exhibits that are at issue.

4 Can the government address that?

12:16 5 MS. SISKIND: Well, Your Honor, I think we could
6 continue this tomorrow if we don't finish today, or we could, in
7 a slight reversal of what Mr. Webb has indicated, maybe come in
8 Monday morning and have it and then do jury selection Monday
9 afternoon if it proceeds to that point.

12:16 10 I just would raise for the court, one of our witnesses
11 is flying in from India. He might very well be on a plane right
12 now. I think he's supposed to arrive in the United States
13 today. So if at all possible we would like to be able to
14 proceed at some point next week to trial because he has taken it
12:17 15 upon himself to fly here and arrive -- I believe he's arriving
16 today.

17 THE COURT: Believe me, I don't take the matter of a
18 continuance lightly and would like to proceed if at all
19 possible.

12:17 20 Let me ask the clerk what time we have available to
21 conclude these proceedings, in part today and, say, tomorrow.

22 THE CLERK: Today until 3 :15, and then tomorrow we
23 would have to address some scheduling issues.

24 THE COURT: What time slots do we have tomorrow
12:17 25 assuming we continue some of the matters that can be continued?

1 THE CLERK: From 11:00 to perhaps 2:30. May be again
2 from 3:30 to the end of the day.

3 THE COURT: Would those time slots be available?

4 MS. SISKIND: For the government, yes, Your Honor.

12:18 5 MR. WEBB: Your Honor, the answer will be yes, we'll
6 do whatever Your Honor wants.

7 This afternoon -- if we go this afternoon, we'll all
8 be here. Dr. Ahuja, he didn't -- he's going to be here whenever
9 we tell him to be here. He didn't realize that we'd be going
12:18 10 into this afternoon. I guess I underestimated how long this
11 would take. He's got two major surgeries this afternoon in very
12 difficult cases. Would it be okay if we waived -- if we waived
13 his appearance under the rule we could excuse him this
14 afternoon. Obviously, he'll be here at all times during the
12:18 15 trial. But we're willing to waive his appearance. But if you
16 tell us he's gotta be here he'll be here. I guess I'm
17 requesting --

18 THE COURT: Well, I will inquire of your client at
19 this stage. Or you may address him.

12:19 20 MR. WEBB: I will.

21 Doctor, based on the request you made to me in the
22 hallway, it's important that if you're not going to be here this
23 afternoon you have to waive on the record right now your right
24 to be here because you have an absolute right to be here. Do
12:19 25 you waive your right to be here this afternoon?

1 THE DEFENDANT: For my patients I waive my rights.

2 MR. WEBB: He waives his right to be here this
3 afternoon.

12:19 4 THE COURT: Very well. The court accepts the waiver
5 and we will proceed.

6 We will do this. We will go for, let's say, another
7 15 or 20 minutes, and we will take a 45-minute break and we will
8 resume after that until 3:15.

9 MR. WEBB: Yes, Your Honor.

12:19 10 THE COURT: All right. Counsel, you may continue.

11 MS. SISKIND: Your Honor, the court reporter had asked
12 for a copy of the exhibit binder; can I have the special agent
13 just bring him a copy --

14 THE COURT: Absolutely.

12:20 15 MS. SISKIND: -- of the binder?

16 The issue came up a moment ago about what other
17 examples there might be of communications from bankers that were
18 specifically authorized. I want to go through a couple of
19 those -- go through those examples for the ones that the
12:20 20 government has located specific authorizations since those are
21 the easier cases.

22 THE COURT: One second. Hold on.

23 (Brief pause.)

24 THE COURT: Proceed.

12:20 25 MS. SISKIND: Thank you, Your Honor.

1 So far we have already addressed Exhibits 21, 22, 46,
2 61, and 63. Another example of two banker communications that
3 were specifically authorized by the defendant are found in
4 Exhibits --

12:21 5 THE COURT: I believe we discussed 62 as well.

6 MS. SISKIND: I'm sorry, 62 as well, yes. As
7 corroborating, yes.

8 If we go to Exhibits 6 and 7, these are e-mails
9 particularly from Priti Dhanani, and also one from Ramit Bhasin
10 which I'll talk about separately in a moment because he was not
11 an employee of the representative office. But in 6 and 7 there
12 are e-mails from Priti Dhanani regarding Dr. Ahuja's desire to
13 have a checkbook issued to him from his HSBC-India account.
14 Those communications by the bankers on the subject of the
15 checkbook are specifically authorized by the signed letter from
16 Dr. Ahuja in Government Exhibit 5.

17 This is an undated letter to HSBC-New Delhi, signed by
18 the defendant, requesting that the bank urgently issue him a
19 checkbook for his account. And he says, "Do not stamp NRO on
20 the checkbook, just mention my account number. I hereby
21 authorize Mr. Ramit Bhasin to collect the checkbook on my behalf
22 upon valid identification."

23 This e-mail which the defendant is requesting the bank
24 issue him a checkbook, and then authorizing Mr. Bhasin to
25 collect the checkbook for him, is the specific authorization for

1 the communications from Priti Dhanani and from Ramit Bhasin in
2 Government's Exhibits 6 and 7.

3 THE COURT: Does the defense wish to be heard?

4 MR. KIRSCH: To be brief on Exhibits 6 and 7. But,
12:23 5 Your Honor, the way I read this e-mail is a little bit different
6 than the way the government reads it. I read the first e-mail
7 on page 6 on the bottom of the page to be an e-mail from Ramit
8 Bhasin to Arvind Ahuja. There's no evidence whatsoever that
9 Mr. Bhasin was ever authorized to speak on behalf of an e-mail
10 to Arvind Ahuja in an e-mail which he sent to Arvind Ahuja. So
11 I'm just a little confused by the government's argument.

12 Then there's -- that e-mail is forwarded to Mr. Priti
13 Dhanani. Which was -- so this e-mail first is a request from
14 Ramit Bhasin to Arvind Ahuja. Arvind then filed -- I'm sorry.
12:24 15 Dr. Ahuja then sends that e-mail to Ms. Dhanani at HSBC.
16 Ms. Dhanani then sends back to Dr. Ahuja a letter. And the
17 government is suggesting that the letter that Ms. Dhanani sent
18 back to Dr. Ahuja is Government Exhibit 5. But I note that
19 Government's Exhibit 5 is a signed letter from Dr. Ahuja.

12:24 20 So unless the government's going to argue that
21 Ms. Dhanani signed the letter on Dr. Ahuja's behalf and then
22 sent it back to Dr. Ahuja, I have no idea -- and this is the
23 problem, Your Honor, when there's no HSBC witnesses -- I have no
24 idea what this is. And I can see the Bates numbers are close,
12:24 25 they're not exact. Oh, they are exact, actually, because the

1 last one is 28199. But that just means that the bank stamped
2 them. I don't know who put these -- I mean, these stamps
3 weren't done -- they were done by a human being. So somebody
4 made the decision that this was the letter that Priti Dhanani
12:25 5 sent to Arvind Ahuja on August 21, 2008. But, Your Honor, this
6 is -- the letter we did not object to, Government's Exhibit 5,
7 because we recognize that's a weight, not an admissibility
8 determination.

9 But the government separates these out and puts 5 and
12:25 10 6, and now they're using 5 to bootstrap 6. And I don't think
11 they can do that. And I don't know where in 6 there's a
12 statement from Arvind Ahuja asking Ramit Bhasin to do anything
13 at all. And clearly he's the declarant. The whole purpose that
14 the government wants to put this -- if you cut off the top half
12:26 15 of this e-mail, that's really all the government cares about is
16 the bottom half, the e-mail from Ramit Bhasin to Arvind Ahuja.
17 Your Honor, I can't think of any problem way that's admissible
18 under 801(2)(d)(C) (sic).

19 THE COURT: Let me see if I am interpreting number 6
12:26 20 correctly. Number 6, sent out allegedly by Priti Dhanani on the
21 21st of August of 2008, it is addressed to Dr. Ahuja. And after
22 that it is unclear. Can the government tell me exactly what
23 they believe this shows?

24 MS. SISKIND: Yes, Your Honor. If Your Honor starts
12:27 25 at the bottom of the page, there's an e-mail from Ramit Bhasin

1 that starts "Hi, Arvind." Ramit Bhasin is explaining to him
2 some things that Mr. Basin needs from the defendant in order to
3 open up a bank account at another -- to open up a financial
4 account with Mann Financial. The defendant then adopts that
5 statement by forwarding Ramit Bhasin's e-mail along to Priti
6 Dhanani, and that's what shows in the middle of the page, Arvind
7 Ahuja to Priti Dhanani.

8 THE COURT: One second. The top of the page shows an
9 address to Arvind Ahuja, to -- it says "to Priti Dhanani." Then
10 it has a subject, and then it says "forward, HI." And below
11 that it says "THX1, original message from Ramit Bhasin." And it
12 says "Hi, Arvind."

13 And it has a second page which has a cautionary
14 statement followed by a reference to the deletion of the
15 material by Priti Dhanani. And below that it says something
16 about checkbook.doc.

17 What is the purpose of this e-mail?

18 MS. SISKIND: The government is going to introduce
19 evidence through the testimony of Ramit Bhasin at trial
20 regarding a checkbook that the defendant obtained for his bank
21 account.

22 THE COURT: So you anticipate calling this particular
23 witness who authored the document.

24 MS. SISKIND: Yes, Your Honor.

25 THE COURT: And you anticipate authenticating the

1 document.

2 MS. SISKIND: Yes, Your Honor. He will explain the
3 circumstances under which he assisted the defendant in obtaining
4 this checkbook.

12:30 5 THE COURT: All right. And statements that he makes
6 in the documents, what do you intend them to show?

7 MS. SISKIND: They're intended to show that the
8 defendant -- the circumstances under which the defendant
9 obtained this checkbook. Mr. Bhasin will testify that he was
10 helping the defendant open other financial accounts in India,
11 including the one at Mann Financial, and that in doing so Mann
12 Financial required him to obtain a checkbook. So Mr. Bhasin was
13 assisting the defendant because, as Mr. Bhasin will testify, he
14 was living in India for part of this time period and was on the
12:30 15 ground in India and it was helpful for him to facilitate certain
16 transactions.

17 THE COURT: So it's your intention to show that
18 Mr. Ramit Bhasin was an agent of the defendant and that he took
19 certain actions consistent with instructions that were given to
12:30 20 him by the defendant?

21 MS. SISKIND: Yes, Your Honor.

22 THE COURT: And is it also your intention to show what
23 may have motivated conduct by Mr. Bhasin?

24 MS. SISKIND: I'm sorry, Your Honor?

12:31 25 THE COURT: Is it your intention to show what

1 motivated certain conduct by Mr. Bhasin?

2 MS. SISKIND: Yes, Your Honor.

3 THE COURT: All right. I'm not certain I understand
4 why the defendant believes this particular set of exhibits would
12:31 5 not be admissible, assuming there is the testimony of Mr. Bhasin
6 as outlined by the government.

7 MR. KIRSCH: Your Honor, with all due respect,
8 Mr. Bhasin is not going to be able to authenticate this letter.
9 He's not -- he may be able to say he wrote the e-mail. And I'll
12:31 10 tell you why. I just picked up on this because the court
11 mentioned it. If you look at the letter, the letter that is
12 attached says checkbook.doc. That's a Word document. Now I'm
13 not all that computer literate, but Word documents do not appear
14 like the document in Government's Exhibit 5.

12:32 15 There's a signature on this document. There is -- I
16 mean, this is not a Word document. This may be a PDF, it may be
17 a scanned document, but it's not a Word document. So, again,
18 they're taking an e-mail that may have well contained an
19 unsigned letter and they're saying, nope, this was the letter.

12:32 20 Now, there's no way that Mr. Bhasin is --

21 THE COURT: When you say an unsigned letter, are you
22 talking about what Mr. Bhasin said as opposed to Exhibit
23 Number 5?

24 MR. KIRSCH: I don't know -- I don't I don't know --
12:32 25 well, I guess -- all I can say is if you take Mr. Bhasin's

1 e-mail that he sent to Dr. Ahuja, there was nothing attached
2 when he sent the letter. The only way to read the e-mails --
3 Mr. Bhasin sends an e-mail to Dr. Ahuja. There's nothing
4 attached to that e-mail. Then, Dr. Ahuja forwards that e-mail
5 to Priti Dhanani. Priti Dhanani then sends a letter to Arvind
6 Ahuja, but Ramit Bhasin is not on that e-mail. He never
7 receives this letter. Never. The letter is attached to Priti
8 Dhanani's e-mail to Ramit Bhasin. Ramit Bhasin cannot lay the
9 foundation for this e-mail and for this letter. He may be able
10 to say that he sent this original e-mail to Dr. Ahuja on August
11 21, but that's not an 801(d)(2)(C) statement, first of all. An
12 e-mail to one -- if I sent you an e-mail it would not be
13 admissible under 801(d)(2)(C), my e-mail to you.

14 And so, again, the government, they can't call Ramit
15 Bhasin to testify and to lay a foundation and to lay the
16 foundation for Exhibit Number 5 and Exhibit Number 6 when he
17 wasn't on that e-mail. He's not on the e-mail from Priti
18 Dhanani to Arvind Ahuja which attaches this letter. This
19 document does not show that Mr. Bhasin ever received the letter,
20 and certainly not the e-mail.

21 THE COURT: Does the government wish to be heard?

22 MS. SISKIND: Yes, Your Honor. This may be a
23 circumstance where it's worthwhile to wait and see what
24 Mr. Bhasin says when he testifies. It's my recollection of his
25 previous statements that he was aware that a letter signed by

1 the defendant and provided to the bank. I believe, and I will
2 have to look back at his grand jury testimony, I believe he may
3 have been involved in giving that letter signed by the defendant
4 to the bank. But it might be helpful -- when he's on the stand
12:34 5 I will take him through the circumstances leading up to this
6 letter and we can see what he says.

7 THE COURT: Well, this exhibit is not clearly
8 inadmissible and, therefore, at this stage the court is going to
9 withhold ruling as to its admissibility.

12:34 10 MS. SISKIND: And moving on to 7 which is the related
11 e-mail from Priti Dhanani on August 24th, 2008. If you look at
12 her e-mail that starts "Hi, Vivek," under number 1 she says
13 "Enclosed is the request letter for the same and authorizing
14 Mr. Ramit Bhasin to collect the same." I would suggest that
12:35 15 that -- when shes talking about issuing the checkbook and
16 enclosed is a letter, that refers to the letter signed by the
17 defendant in Exhibit 5 authorizing the checkbook to be issued
18 and for Ramit Bhasin to pick it up at the bank.

19 THE COURT: Does the defense wish to be heard?

12:35 20 MR. KIRSCH: Yes, Your Honor, just very briefly on
21 Exhibit 7. On Exhibit 7 there's nothing enclosed or attached.
22 This is an e-mail from Priti Dhanani, she's not going to be here
23 to explain it, to Vivek Gupta, he's not going to be here to
24 explain it, cc: Ramit Bhasin and natasha2@bloomberg.net.

12:36 25 And I agree what it says. I can read it, "enclosed is

1 the request letter," but there is no letter. And, again, I
2 don't know how this is -- maybe the -- the government raised
3 with 6, they want to try to establish a foundation for
4 admissibility and the court reserved ruling, but I don't know
12:36 5 how the government can ask for a pretrial ruling on this e-mail
6 under 801(2)(d)(C) (sic).

7 THE COURT: How do you plan to tie this up,
8 Ms. Siskind?

9 MS. SISKIND: Your Honor, if you look at what
12:37 10 Ms. Dhanani is saying in Exhibit 7 as she explains what the
11 attached letter is. She says, "Could you please arrange for the
12 following: Issuance of a loose checkbook. Enclosed is the
13 request letter for the same. And authorizing Mr. Ramit Bhasin
14 to collect the same."

12:37 15 It is very clear from the letter in Exhibit 5 that
16 this is the letter she's referring to. Because in Exhibit 5
17 Dr. Ahuja says, "You are requested to please urgently issue a
18 loose NRO savings account checkbook. I hereby authorize Ramit
19 Bhasin to collect the checkbook."

12:37 20 Taken together, it seems clear that the letter that
21 Priti Dhanani is referring to in Exhibit 7 is the letter in
22 Exhibit 5. The content is identical.

23 THE COURT: Mr. Kirsch, that would seem to be so.

24 MR. KIRSCH: Your Honor, there's not going to be a
12:37 25 single witness that testifies from the witness stand and tells

1 the jury that that's the case. Not one single witness is going
2 to tell the jury that. And again, the government is going to
3 argue their theories from hearsay evidence to the jury.

4 The government, they can't lay the foundation for the
12:38 5 admission of -- they can't do it through argument of counsel,
6 and they have no witness that's going to testify to what
7 Ms. Siskind just told the court. None. If they called a
8 witness and the witness testified to that perhaps they would lay
9 the foundation. They can't lay the foundation by just arguing
12:38 10 to the court this is what they think.

11 And, Your Honor, the other thing is, I would just
12 point out to the court, there's a whole bunch of other stuff in
13 this e-mail, paragraph after paragraph after paragraph, and
14 we're only talking about one sentence. So I don't know what
12:38 15 the other -- I mean --

16 THE COURT: Are you referring, for example, to
17 paragraph 2 that says something about "wants a bank certificate
18 on the letterhead"?

19 MR. KIRSCH: Exactly, Your Honor. I mean, I just
12:39 20 don't know -- I'm saying that. I'm saying "one of your branch's
21 largest Premier customers and a couple of urgent requests."
22 There's nothing in anywhere that indicates that Dr. Ahuja made a
23 request, that it was urgent, that he was one of the largest
24 Premier customers. This is all hearsay that the government
12:39 25 wants to put in front of the jury and they make these arguments.

1 THE COURT: That I do believe is problematic. That's
2 why I made the comment earlier about certain editorial comments
3 that may be in some of the materials.

4 So I would like to hear what the government has to say
12:39 5 respecting whether or not the document should be received in its
6 present form without redaction, except for, of course, the
7 account numbers that have to be masked.

8 MS. SISKIND: Your Honor, there's some statements that
9 it might be possible to redact without altering what the
12:40 10 government is trying to use this document for. But as I
11 indicated earlier, Your Honor, there are some statements that
12 are going to be in these e-mails from Priti Dhanani and from
13 Ankush Tandon that bear on their state of mind as
14 co-conspirators in this case.

12:40 15 So even if the statement would not be admissible for
16 the truth of the matter asserted to show what they might have
17 done on the defendant's behalf, when Priti Dhanani talks about
18 things like him being the -- one of the highest net worth
19 customers at the bank, the government submits those are
12:40 20 statements that bear on her state of mind with respect to the
21 conspiracy, and the jury should be permitted to view those
22 statements so that the parties can argue about what the
23 co-conspirators or alleged co-conspirators' state of mind was.

24 THE COURT: Will you be offering her testimony as
12:40 25 well?

1 MS. SISKIND: No, Your Honor. Unfortunately, she is
2 in India and not subject to the subpoena power of this court.

3 THE COURT: I'm going to allow the statement, that
4 portion of the statement. But, of course, there has to be a
5 foundation for that inasmuch as it appears the government is
6 proceeding on several theories one of which is the statements of
7 Dhanani were part of the conspiracy and these statements were in
8 the course of the conspiracy. So I do believe you need to
9 establish a foundation for some of this.

10 MS. SISKIND: Yes, Your Honor.

11 THE COURT: Proceed.

12 MS. SISKIND: The next one I think we should look at
13 is Government Exhibit 35. And this is an e-mail in which Ankush
14 Tandon is writing to the defendant regarding credit card PIN
15 numbers being delivered to a United Kingdom address. This
16 statement -- or the fact that this is a statement that has been
17 authorized by the defendant is corroborated by Government
18 Exhibit 32, which is a letter signed by the defendant dated one
19 day earlier than Ankush Tandon's e-mail in which the defendant
20 requests for PIN numbers to be issued for his credit card and be
21 sent to an address in London.

22 THE COURT: I note that 32 is addressed to the Premier
23 Department, HSBC-Jersey, with a date of November 16th, 2006.
24 Purports to be signed by the defendant. And the subject is as
25 you've stated.

1 35 appears to have been transmitted by someone and the
2 subject is consistent with 32. However, the identity of Tandon
3 is not apparent.

4 On the other hand, it appear that this is one of the
12:44 5 items provided to the government by HSBC-NRI. And it also
6 appears the subject is consistent with what the government
7 represented that is an address in London where a PIN should be
8 sent respecting a credit card.

9 Does the defense wish to be heard?

12:45 10 MR. KIRSCH: Just very briefly, Your Honor. We've not
11 objected to 32. So just so the court knows is the letter.

12 THE COURT: All right.

13 MR. KIRSCH: I recognize that that comes in.

14 But 35 I just have two very brief comments. Number
12:45 15 one, there's no evidence that Dr. Ahuja ever authorized Ankush
16 Tandon to ever speak or say anything on his behalf, number one,
17 under 802 -- 801(d)(2)(C).

18 Number two. Your Honor, 35 is irrelevant. I don't
19 know -- we're not talking about relevance here, but 35 is
12:45 20 irrelevant.

21 THE COURT: All right, what is the relevance?

22 MS. SISKIND: Your Honor, the government alleges in
23 the indictment that as part of the conspiracy HSBC bankers
24 including Priti Dhanani and Ankush Tandon assisted the defendant
12:46 25 with the management of his account. And as part of that, they

1 assisted him in accessing funds in his undeclared offshore
2 accounts by means of credit cards and debit cards.

3 And there are two more examples of e-mails that we've
4 also exhibited in which Mr. Tandon is helping the defendant
12:46 5 obtain credit and debit cards linked to his HSBC-Jersey account.

6 THE COURT: Well, let me stop you. I do see in
7 looking at 34 a reference to Ankush Tandon. Is that part of the
8 string of e-mails that you will seek to have admitted? And one
9 that should be taken into account in determining whether or not
12:46 10 35 is admissible?

11 MS. SISKIND: Yes, Your Honor. 34 and then also 31 is
12 another e-mail from Ankush Tandon regarding this same issue of
13 debit cards or credit cards linked to the HSBC-Jersey account.
14 There's really three e-mails from Mr. Tandon, all on the same
12:47 15 subject matter, that Mr. Ahuja -- or Dr. Ahuja's letter pertains
16 to.

17 THE COURT: I see that Dr. Ahuja's letter is dated
18 November 7th. That's number 33.

19 32 is dated November 16th.

12:47 20 34 is dated November 7th. That's one that was sent by
21 Tandon. He does have additional communications which include a
22 statement: "Hi, Ankush, regrettably, due to security reasons we
23 are unable to act upon your request. Please request our
24 customer contact us direct via telephone or fax."

12:48 25 At the bottom it talks about "Arvind and Namrata Ahuja

1 are high net worth clients HSBC-India and they also have Premier
2 accounts with HBOS. They have the following cards with their
3 HBOS account and have requested us that these cards be
4 activated. Also, they would like fresh PIN numbers to be
12:48 5 generated for both these cards and couriered to their U.S.
6 mailing on priority. Please have the actioned urgency and
7 advise us the counter tracking airway bill number."

8 And there are card numbers that follow, with Ankush at
9 the bottom -- listed at the bottom of the page as the signatory.

10 MR. KIRSCH: Your Honor, I think I have -- I may have
11 misspoke when I addressed the court earlier. Exhibit 33 is a
12 letter signed by Nami Ahuja? Did you withdraw that exhibit?

13 MS. SISKIND: 33 we're not addressing here. We
14 understand that that is not admissible.

15 MR. KIRSCH: Okay. I'm sorry Your Honor. So 33 is
16 gone.

17 32 is dated November 16th, 2006. But these e-mails
18 from November 6, 10 days before that, they make no reference to
19 Arvind Ahuja having told anybody anything. It says "they--"
12:50 20 "they have the following cards and have requested--"

21 We don't know who -- maybe it was Mrs. Ahuja who made
22 the request, but Ankush Tandon is not going to be testifying.
23 So, I mean, the letter from Dr. Ahuja comes in, but these
24 other --

12:50 25 THE COURT: But the November 7th letter which appears

1 to -- which follows the -- which follows number 33 appears to be
2 one that was generated in response to something that was said by
3 a person other than this defendant. That's what you're arguing,
4 correct?

12:50 5 MR. KIRSCH: Right. 33 is not -- the government
6 recognizes it's hearsay, it not admissible for any purpose.
7 They're not even offering it. It's signed by Nami Ahuja. But
8 they're using these e-mails 31 and -- at least 31 and I guess
9 34, these e-mails -- and even, Your Honor, if you look at 34,
12:51 10 the PDF at the very top of the page that is attached, it says
11 "Enclosed is a signed instruction from the client that has been
12 sent to us at HSBC-New York. Please execute this on priority."
13 The name of the PDF is Namrata. That's Nami. It's signed -- or
14 it's sent on November 7th, 2006. Dr. Ahuja doesn't even sign
12:51 15 Government's Exhibit 32 until November 16th, 2006 --

16 THE COURT: Correct.

17 MR. KIRSCH: -- so this has gotta be the letter 33.

18 THE COURT: You're right. You're right.

19 MR. KIRSCH: I'll sit down.

12:51 20 THE COURT: You're ahead.

21 MS. SISKIND: Your Honor, I think I can give some
22 clarity to this. 33 we're not admitting. The letter from
23 Namrata Ahuja, we agree that it's not admissible.

24 THE COURT: So why would 34 be admissible? Which is
12:52 25 dated November 7th.

1 MS. SISKIND: Right. 34, Your Honor, was one that we
2 were attempting to admit under the -- our overarching theory
3 that that was part of the relationship between the bankers and
4 the bank to help clients get debit cards. It's actually 35 that
5 we are trying to admit based on 32.

12:52

6 THE COURT: So you're not trying to admit 34 either.

7 MS. SISKIND: We're trying to admit 34 but not
8 corroborated by the letter in 32. It's under a different theory
9 of admissibility.

12:52

10 THE COURT: And the theory is merely --

11 MS. SISKIND: That there was a relationship between
12 the defendant and his bankers whereby the bankers were
13 authorized to make certain communications including helping him
14 obtain debit cards. And that's consistent with Ms. Katju's
15 testimony earlier today that one of the things that she did as a
16 relationship manager was help clients get debit cards.

12:52

17 THE COURT: Exhibit 32 refers solely to a credit card;
18 is that correct?

19 MS. SISKIND: And then the same thing is referred to
20 in 35. We also got confirmation that the credit card PINs would
21 be delivered to the UK address.

12:53

22 THE COURT: It looks like we need to take a break. We
23 will resume in 45 minutes.

24 MS. SISKIND: Thank you, Your Honor.

25 THE BAILIFF: All rise.

12:54

1 (Recess taken at 12:54 p.m., until 1:48 p.m.)

2 THE COURT: When we broke we were talking about
3 Exhibit 35.

4 MS. SISKIND: Yes, Your Honor.

01:48 5 THE COURT: Let me ask you before you continue with
6 the line of thought that you had, what exhibits do you have with
7 respect to the creation of the accounts -- I should say the
8 establishment of the various accounts at HSBC by the defendant?

9 MS. SISKIND: We have at least one account application
01:49 10 that was filled out by the defendant. And we have some -- there
11 was some notations on that application that at the time that
12 application was filled out the defendant was already an existing
13 customer of the bank. And I believe it indicates that he had
14 had an account with the bank as early as 2004.

01:49 15 So although we don't have the application that goes
16 back to 2004, there are statements within a business record that
17 indicate he had accounts going back to 2004.

18 THE COURT: Now, with respect to that account or any
19 other accounts, do you have the -- any documents setting forth
01:49 20 the terms of the relationship between the defendant and HSBC?

21 MS. SISKIND: There are some discussion of that in the
22 account opening forms that we do have among our exhibits. We do
23 not have the original account opening documents. Unfortunately,
24 those are likely in India and were unable to be obtained through
01:50 25 a subpoena.

1 THE COURT: But as of the relevant dates do you have
2 any existing -- any documents respecting the nature of the
3 relationship between the defendant and HSBC?

4 MS. SISKIND: The only documents we have concerning
01:50 5 the nature of the relationship are statements made by each party
6 to each other during the course of that relationship. And we
7 would suggest the fact that the parties are discussing account
8 management suggests that account management was part of the
9 relationship between the parties.

01:50 10 THE COURT: Do you have any particular statute or
11 regulation with respect to the nature of the relationship
12 between the defendant and HSBC at all times relevant in this
13 case?

14 MS. SISKIND: I don't believe so, Your Honor.

01:50 15 THE COURT: All right. Do you rely upon anything
16 within the UCC or any regulations governing HSBC spelling out
17 the terms of the relationship and any obligations that HSBC may
18 have to Dr. Ahuja as a customer?

19 MS. SISKIND: No, Your Honor.

01:51 20 THE COURT: All right. That's what I needed to know.

21 MR. KIRSCH: Your Honor, can I comment?

22 THE COURT: Oh, absolutely.

23 MR. KIRSCH: Okay. Your Honor, I actually -- you hit
24 on what I was going to talk about. I think this is a very, very
01:51 25 important point. The government alleges in its indictment that

1 Dr. Ahuja opened an account at HSBC in New York in the early
2 2000s. But there is nothing, there is not one document, there
3 will be absolutely no evidence, there will be no testimony,
4 there will be nothing at all establishing that relationship
01:51 5 between Dr. Ahuja and HSBC. There's no account opening
6 application, there are no e-mails, there's no nothing that set
7 forth the relationship between Dr. Ahuja and HSBC at the time it
8 was created. What he was told, what they told him, there's
9 nothing.

01:52 10 And I think that's very important. The government's
11 trying to establish this agency relationship, there is not one
12 single bit of evidence to establish -- no witness testimony, no
13 documents, no nothing to establish that relationship at the time
14 that it was existent -- what Dr. Ahuja may have been told, what
01:52 15 he knew, what he wasn't told, et cetera. So I think the court's
16 questions touch on a very, very important issue that affects all
17 of the evidentiary rulings in this case.

18 THE COURT: There is no doubt. And I am very
19 concerned about the bases for the government's claims respecting
01:52 20 the relationship of Dr. Ahuja to HSBC. And what I would like
21 the government and the defense to do is to provide me with
22 authorities related to the relationship between the defendant
23 and HSBC, to the extent that they pertain to this case and the
24 indictment. Because the centerpiece of the government's
01:53 25 arguments respecting the admissibility of the various pieces of

1 materials that the government will be offering as exhibits is
2 that there was a banking relationship which governs or did
3 govern the conduct of the bank vis-a-vis the defendant; that
4 there was an understanding that the bank would be required to
01:54 5 follow instructions given to it by Dr. Ahuja; and, of course,
6 that the bank carried out the instructions of Dr. Ahuja for the
7 purpose of allowing him to avoid reporting certain transactions,
8 certain funds and any obligation he may have had to pay taxes.

9 To the extent that these things are very important I
01:55 10 believe it is imperative that you be required to respond
11 immediately to these concerns.

12 Now, I've canceled part of my calendar tomorrow to
13 accommodate additional discussion of the evidentiary issues that
14 have been raised, and I'm wondering given what I've just heard
01:56 15 and the questions I just raised whether or not it would be
16 productive -- or more productive for us to shift gears and look
17 at some of the other matters and then come back to this
18 discussion of exhibits, particularly those that relate to
19 e-mails and other materials such as screen shots that were
01:56 20 apparently prepared in response to requests made by Dr. Ahuja of
21 various HSBC employees at various times. What does the
22 government have to say?

23 MS. SISKIND: Your Honor, we would submit that one
24 thing the court does have before it is the testimony of Vandana
01:56 25 Katju about what the role of representative office employees

1 were. What we can do this evening is locate for you documents
2 specifically relating to Priti Dhanani, for example, that show
3 that her job duties were just as Vandana Katju described.

4 In terms of those, something in writing in document
01:57 5 form establishing that they were to provide those for Dr. Ahuja
6 specifically, I don't know that we're going to find that. But
7 what we are going to be able to show is he was a customer, they
8 were relationship managers, and as relationship managers they
9 had certain responsibilities with respect to their customer.

01:57 10 And we can provide some additional documentation. There's one
11 document that I can think of off the top of my head that
12 explains Priti Dhanani's role in the bank exactly as Vandana
13 Katju described it. The document would describe what her role
14 was at the bank. And what I think Your Honor would see looking
01:57 15 at that, is that it describes her role just as Vandana Katju
16 described the role of a relationship manager today.

17 THE COURT: So what I gather from your comments is,
18 the government will not be relying upon any banking regulations
19 or any case law to support its contentions with respect to the
01:58 20 way -- with respect to the relationship of Dr. Ahuja to HSBC and
21 its employees; is that correct?

22 MS. SISKIND: You're correct, Your Honor. It's going
23 to be based on the facts and circumstances as opposed to a
24 particular regulation or statute.

01:58 25 THE COURT: All right. And beyond that, what you

1 envision is looking into -- looking at the various materials to
2 bootstrap what you've said thus far respecting the obligations
3 that HSBC employees and the bank in particular had vis-a-vis
4 Dr. Ahuja.

01:59 5 MS. SISKIND: Yes, Your Honor. Although there are
6 some more examples of what we've looked at earlier where there
7 is a particular e-mail tying to a particular letter from the
8 defendant. There are some more examples of that with particular
9 e-mails that seem from the context to be clearly authorized by
01:59 10 the defendant.

11 As far as the other types of e-mails where there is
12 not a specific letter from the defendant that ties to that
13 e-mail, yes, we are basing our theory of admissibility on the
14 general relationship between relationship managers and customers
01:59 15 at HSBC.

16 THE COURT: All right. Does the defense believe that
17 it should be given an opportunity to supplement its arguments
18 with research?

19 MR. KIRSCH: Well, Your Honor, we can do that. I
01:59 20 agree that we should move on. I mean, I have no problem with
21 that. We can do that. We can look to supplement the research
22 and the arguments that I've made today.

23 But, Your Honor, I just want to make one thing clear
24 that the screen shots issue, which is another issue that's come
02:00 25 up, you mentioned screen shots that were requested by Dr. Ahuja.

1 The woman -- the lady who we spoke with this morning, she talked
2 about screen shots generally. But if you look at the
3 government's exhibits that have to do with screen shots, which
4 include Government's Exhibit 69, Government's Exhibit 71, these
02:00 5 are various screen shots. There is no evidence that Dr. Ahuja
6 ever asked for a single screen shot. None.

7 And it's -- a big issue are these screen shots.
8 Because the government called a witness this morning who
9 testified that she has no idea how these were created. She
02:00 10 couldn't access the computer, she couldn't input information,
11 she doesn't know who inputted the information. Based on what,
12 she had no information on that. And there's not a single
13 request from Dr. Ahuja asking for a screen shot.

14 So, I just wanted to clear that up. But yes, we can
02:01 15 move -- if the court wants to move on to other issues I'm
16 perfectly fine with that, Your Honor.

17 THE COURT: Well, with respect to screen shots, I also
18 understand from the testimony that the witness was familiar with
19 the HUB computer system of HSBC because while she was employed
02:01 20 by HSBC in India she had access to and regularly utilized the
21 computer system and the HUB for the purpose of viewing the
22 account information of HSBC customers.

23 What she observed while in India and what she has
24 since observed in connection with this case she said was
02:02 25 consistent, and that there was nothing about the various screen

1 shots that she saw that led her to conclude that there was
2 anything inaccurate with respect to those screen shots. She,
3 from her testimony it would appear that screen shots are
4 produced by accessing various pages of a customer's account, and
02:02 5 that it is the regular and customary practice of HSBC to input
6 information which would be reflected in screen shots that could
7 then be ordered by someone in the United States who is in one of
8 the representative positions in response to an inquiry by an
9 HSBC customer, particularly a customer who is seeking
02:03 10 information that is subject to some kind of confusion and there
11 is a need to report that to that customer accurately the
12 materials in the customer's account.

13 And so even though there may not be specific testimony
14 that Dr. Ahuja ordered a particular bank employee to produce the
02:03 15 screen shots, the question that has to be answered is whether or
16 not the screen shots would be admissible on other grounds,
17 particularly in view of the stipulation that was reached by the
18 parties. Would you agree or disagree?

19 MR. KIRSCH: Your Honor, I generally agree with that,
02:03 20 whether it would be admissible on other grounds. I think this
21 witness this morning testified, though, that she never saw these
22 screen shots and she never viewed these screen shots.

23 I think -- I agree with the court's -- I agree with
24 the court's summary of her testimony about what she did while
02:04 25 she was in India. But she never inputted data into the computer

1 system.

2 THE COURT: That was clear. But it would appear --
3 from her testimony and from the stipulation, it would appear
4 that screen shots are produced as part of the regular business
02:04 5 activities of HSBC, and that here that agents of HSBC made
6 inquiry of the company in India as to what is in a customer's
7 account and the screen shots are then provided in response to
8 their inquiries. And it is normal and regular for this to take
9 place. And it's my understanding that the parties have
02:05 10 stipulated that these materials, including the screen shots,
11 were produced in the ordinary course of the business of HSBC by
12 someone who engages in this activity as part of their duties.
13 Unless I've misunderstood the stipulation that's what I believe
14 is before the court.

02:05 15 MR. KIRSCH: Your Honor, what we stipulated to is that
16 they were produced to us -- that they were HSBC records, that
17 they're authentic records. What we have not stipulated to is
18 that they were created in the regular course of the business by
19 a person with knowledge. There's been no testimony at all about
02:06 20 how these documents were created. What information was inputted
21 into the system, based on what, to get and to show that final
22 screen shot.

23 So we don't know that the information contained in the
24 screen shot is reliable because there's been no testimony about
02:06 25 how these screen shots were created and based on what documents

1 they were created.

2 And that was specifically my line of questioning when
3 I asked her did you have input, and I asked her -- Your Honor,
4 there was a question I -- almost a verbatim question, I asked
02:06 5 her if she knew how information was put into the system, and she
6 testified no. She didn't have any idea how the screen shots
7 were created.

8 And I think that's -- our 803 objection is basically
9 based on that; that the government can't produce evidence as to
02:06 10 how the records were created which is a fundamental requirement
11 of 803(6).

12 We don't have any -- look, there's no doubt that HSBC
13 produced these records to the government and the government gave
14 them to us. We're not disputing that. But to satisfy 803(6)
02:07 15 and to qualify as a hearsay exception, the government has to
16 show how it was that they were created, they were created by a
17 person at or near the time with knowledge of the information,
18 and that this witness was not able to do. And, of course, the
19 other witness who testified live -- I forgot his last name. I
02:07 20 remember his first name was Scott but I can't remember his last
21 name. He had absolutely no idea. He didn't even review them.
22 He just testified that they were on HSBC's server.

23 THE COURT: Does the government wish to reply?

24 MS. SISKIND: Yes, Your Honor. First, as Your Honor
02:07 25 stayed, Ms. Katju was able to testify as to the reliability of

1 both the bank records in India and the screen shots that came
2 out of those bank records. She was in the unique position to
3 have worked in both places. And I think she was very clear that
4 the computer records in India, the screen shots produced from
02:08 5 those records, were both things that were accurate and were
6 relied upon by her and other employees of the bank in the
7 conducting of their duties.

8 In an effort to bolster the reliability of the screen
9 shots the government took a look at one example of a screen shot
02:08 10 and was able to find some examples of other documents that
11 corroborate the reliability of that document, if Your Honor
12 would like to see that particular example.

13 THE COURT: Go ahead.

14 MS. SISKIND: If Your Honor looks at Exhibit 71, and
02:08 15 go to the third page of that exhibit.

16 THE COURT: All right. I have it.

17 MS. SISKIND: It's the page Bates number ending in
18 27737. It should be the third page of Exhibit 71, I believe.

19 THE COURT: 27737?

02:09 20 MS. SISKIND: 27737, yes, Your Honor.

21 THE COURT: All right. I have it.

22 MS. SISKIND: There are three particular transactions
23 reflected in this screen shot that can be corroborated by other
24 government exhibits. It is the November 8, 2006 deposit of
02:09 25 \$1 million; the June 19th, 2006 deposit of a little over \$1.8

1 million; the August 3rd, 2006 deposit of \$1 million. And I can
2 now point Your Honor to other documents in that binder that
3 corroborate that those three deposits were actually deposits the
4 defendant made into his account.

02:10 5 THE COURT: Okay. Go ahead.

6 MS. SISKIND: First, if you go to Exhibit 20. I'm
7 hoping Your Honor's copy of Exhibit 20 has three pages.

8 THE COURT: It does.

9 MS. SISKIND: Okay. In here there are some
02:10 10 instructions signed by the defendant.

11 I'm sorry. Oh, you don't have --

12 MR. KIRSCH: My 20 is just one page.

13 MS. SISKIND: Do you have an extra copy?

14 THE COURT: I have Bates 27693, 27700, and 27701.

02:10 15 MS. SISKIND: That's correct. And we're focusing on
16 27700 and 27701. If you look at 27700, this is a letter signed
17 by the defendant on August -- in August of 2005 --

18 THE COURT: August 9th?

19 MS. SISKIND: August 9th, yes. August 9th of 2005,
02:11 20 regarding a deposit of \$1 million on October 2nd, 2005. That
21 corresponds to the entry in the screen shot from August 3rd that
22 reflected a \$1 million deposit. I'm sorry, it reflects a
23 maturity date of August 3rd of 2006.

24 If you look at the next page of this exhibit, this is
02:11 25 another letter signed by the defendant, this one corresponding

1 to the approximately \$1.8 million deposit shown on the screen
2 shot. And that dollar amount is reflected in the first
3 paragraph. Reflecting a maturity date of June 19th, 2006, which
4 is the date Your Honor saw in the screen shot.

02:11 5 THE COURT: All right. It's noted.

6 MS. SISKIND: Okay. And then if you go to Exhibit 72,
7 which are actually records from the defendant's HSBC-USA
8 account, and the defense as we understand it is not objecting to
9 the admissibility of these domestic bank records.

02:12 10 And if you go to the -- if you go to the page, Bates
11 number page ending 28052, this reflects a \$1 million wire
12 transfer that was made from HSBC-United States to HSBC-India.
13 And this is the third transaction that's reflected in the screen
14 shot. So now we have three otherwise admissible documents --
02:12 15 domestic bank records and two letters signed by the defendant --
16 that corroborate the reliability of one particular screen print.

17 Your Honor, we would submit that that, combined with
18 the testimony of Ms. Katju regarding the reliability of these
19 records, supports the admissibility of all of the screen shots
02:13 20 under 803(6).

21 THE COURT: What about sub (d)? 803(6)(d)? "All
22 these conditions are shown by the testimony of the custodian or
23 another qualified witness or by a certification that complies
24 with 902(11) or 902(12), or with a statute permitting
02:14 25 certification."

1 MS. SISKIND: Your Honor, that subpart of the rule has
2 been satisfied in two ways: First, by the testimony of a person
3 with knowledge — in this case Vandana Katju who is familiar with
4 the creation of screen prints; and second, by the testimony of
5 the HSBC records custodian combined with his certification which
6 establishes on its face that these documents were created and
7 maintained in the ordinary course of HSBC business.

8 THE COURT: I would like a response.

9 MR. KIRSCH: Yes, Your Honor. First of all,
10 Your Honor, we can get the transcript, but we fundamentally
11 disagree that Ms. Katju testified that she was familiar with how
12 these screen shots were created. Her testimony was inapposite.
13 She is not familiar with how the screen shots are created.
14 She's not familiar with that.

15 Now, if you look at the screen shot and you see --
16 Your Honor, this is part of the problem with the screen shot.
17 If you look at the top of the screen shot, and it says -- it
18 looks like "IN-HSBC," and then it says "TB" something, and then
19 it says "inquiry by customer."

20 There is absolutely nothing to show an inquiry by any
21 customer. There's nothing to show that Dr. Ahuja ever requested
22 or ever even received a copy of this screen shot. This is
23 hearsay that's highly prejudicial. The government's gonna argue
24 that this document establishes that Dr. Ahuja requested the
25 screen shot. But Ms. Katju, she testified: She doesn't know

1 Dr. Ahuja; she's never spoke with Dr. Ahuja; she never reviewed
2 these screen shots; she doesn't know how this information was
3 put onto these screen shots. It's not a policy of the bank to
4 create these screen shots, they were created merely as a matter
5 of convenience.

02:16

6 Your Honor, these are not --

7 THE COURT: I did not understand that to be the
8 testimony of Ms. Katju. Now, you certainly asked her whether or
9 not some of these things were produced because it was convenient
10 to do so. But, overall what her testimony was indicated that
11 screen shots -- that the HUB system allows employees of the bank
12 to pull up information reflected in the account of HSBC
13 customers, and that Ms. Katju, while employed in India,
14 regularly accessed the HUB system and observed screen shots of
15 various HSBC customers.

02:16

02:17

16 Further, while here in the United States she has been
17 able to make inquiries of the bank in India regarding the
18 accounts of various customers, and has done so particularly in
19 those instances where she in her discretion has determined that
20 it would be more accurate to have the screen shot as opposed to
21 someone's summary of the information in the screen shot to avoid
22 errors in providing information to customers. And that on no
23 occasion has she had any reason to doubt the accuracy of the
24 information in the screen shots which she has relied upon while
25 employed at HSBC, and it is the practice of other HSBC employees

02:17

02:18

1 to utilize and to rely upon the information in the accounts as
2 reflected in the screen shots.

3 MR. KIRSCH: Your Honor, I agree with that. But what
4 she testified to I think is that she could access the screen
02:18 5 shots, and that she relied on them. But she cannot testify --
6 and this is where I pushed her a little bit on this -- she
7 cannot testify as to how they were created. So it would be no
8 different than if the government brought in -- if you consider
9 the domestic bank records -- and we're not objecting to those,
02:18 10 they can come in, we don't object to those. But if the
11 government brought in a bank teller from HSBC who said I can go
12 onto a computer system at the local branch of HSBC and I can
13 access these bank documents, but I can't tell you how these bank
14 documents are created, I can't tell you that they were created
02:19 15 at the time, by someone with knowledge, I can't tell you the
16 basis on which they were created, then the documents do not come
17 in under 803(6).

18 Just because Ms. Katju could access the documents, and
19 just because Ms. Katju relied upon screen shots -- not these
02:19 20 screen shots but screen shots that I have no idea what they look
21 like or what they contain. She never reviewed these to even say
22 these were similar to the screen shots that she relied on 10
23 years ago at HSBC-India. Not one time. And she cannot testify
24 that the documents were created.

02:19 25 So that's the fundamental problem with Ms. Katju's

1 testimony. She provides nothing to advance the argument that
2 the documents were created by someone with knowledge or even how
3 they were created.

4 Like, for instance, this inquiry by customer. Who
5 wrote that? Is that mandatory where you access the screen shot
6 even if someone didn't ask for it? Arvind Ahuja may never have
7 asked for the screen shot. Priti Dhanani may have because she
8 wanted to see something. And so somebody from India writes
9 "inquiry by customer" when Dr. Ahuja, he doesn't even know that
10 these screen shots exist. And yet, here's this document that
11 says "inquiry by customer," Ms. Katju -- Ms. Katju, she can't
12 testify how that was created. And that is the fundamental
13 problem with the government's 803(6) argument with regard to the
14 screen shots.

15 THE COURT: I was trying to look at the particulars of
16 that witness' testimony. And I do recall that she testified
17 that she did not know the particulars of how these documents are
18 created. And I'm also mindful of the point you just made.
19 There is nothing in the record to show that Dr. Ahuja was aware
20 of what was contained in a particular screen shot, or that the
21 screen shots that are being offered in evidence differ in any
22 way from screen shots that the witness saw while employed in
23 India or has seen since she has been here in the United States.
24 Nonetheless, it would appear that these screen shots are made
25 and utilized in the ordinary course of HSBC's business.

1 I'm looking at the other particulars of the rule.

2 (Brief pause.)

3 MR. KIRSCH: Your Honor, it's 803(6)(a) that I'm
4 focused on.

02:22 5 THE COURT: Yeah. I'm looking at sub (a): Whether
6 the record was made at or near the time or from information
7 transmitted by someone with knowledge.

8 Because it does appear that the records were kept in
9 the course of a regularly conducted business activity based upon
02:22 10 what the record custodian said and what -- Miss, is it Katju?
11 The person from San Francisco?

12 MS. SISKIND: Katju, Your Honor.

13 THE COURT: Katju. -- Ms. Katju said.

14 Can the government comment on sub (a)? 803(6)(a)?

02:23 15 MS. SISKIND: Yes, Your Honor. Ms. Katju testified
16 that when she was looking to get a screen print she would
17 contact India, India would respond to her with a screen print.
18 That suggests first that the record, the screen print, was
19 created at or near the time that we're talking about.

02:23 20 THE COURT: Why so? Let's say, for example, if you
21 have -- you've had an account at a bank for years.

22 MS. SISKIND: Well, I think there's two -- I guess two
23 levels to what this record is. There's the computer records in
24 India and then there's these screen prints which are printed out
02:24 25 from the computer records in India.

1 The screen prints were created as needed on the times
2 they were requested by the relationship managers in New York.
3 They were not created until such time as the relationship
4 manager requested it, because there would have been no need for
5 it otherwise.

6 THE COURT: So basically, a screen shot is a snapshot
7 in time.

8 MS. SISKIND: Yes, Your Honor.

9 THE COURT: And they reflect whatever is pictured or
10 produced by the HUB computer system when a demand or request is
11 made.

12 MS. SISKIND: Yes, Your Honor. And Ms. Katju
13 testified that she relied on that computer system and had no
14 reason to doubt its accuracy.

15 THE COURT: Now, with regard to the latter portion of
16 sub (a), you're not suggesting that -- you're showing that it
17 was -- what can you say about the knowledge of the person who
18 may have input the data?

19 MS. SISKIND: Well, Your Honor, as far as the screen
20 prints, we're also talking about the knowledge of the person who
21 made the screen print which would be an HSBC employee sitting in
22 India, fielding a request from a relationship manager, capturing
23 the image on a screen shot, and transmitting it to New York.

24 So the person in India has knowledge of what's on the
25 computer at that moment, because he or she is in India where he

1 or she has access to that computer system. So at the moment in
2 time when that screen shot is captured, it's being done by a
3 person with knowledge of what the computer system looks like at
4 that moment in time.

02:25 5 THE COURT: All right.

6 MR. KIRSCH: Your Honor, may I briefly respond?

7 THE COURT: Please.

8 MR. KIRSCH: Your Honor, first of all, nobody
9 testified to that. And second, if the government is using this
02:26 10 to argue that somebody printed this from their computer and
11 they're not concerned about what's in the screen shot, it's
12 totally irrelevant.

13 The only reason these screen shots are relevant is to
14 show the information that was in the HUB computer system. If
02:26 15 they want to say that somebody printed a shot of their computer,
16 it could have been anything. I mean, it could have been a Word
17 document, a photo of their family. It's totally irrelevant, the
18 fact that they printed it. What's relevant is how the
19 information got put into the HUB computer system in the first
02:26 20 place and what was it based on. And there's absolutely no
21 testimony, and there will be no testimony, because the witnesses
22 the government called cannot testify to it. They don't know
23 what the information was based on.

24 We could call Ms. Katju right now and we could ask her
02:26 25 about inquiry to customer, and I'm certain she would testify: I

1 have absolutely no idea. I have absolutely no idea whether
2 Dr. Ahuja inquired of these screen shots. I don't know if
3 they're Dr. Ahuja's screen shots. I don't know who input that
4 information. And I don't know on what they based it.

02:27 5 And the same is true for every single line in this
6 screen shot. She cannot testify that this screen shot was
7 created at or -- or, I'm sorry, the information contained in the
8 screen shot was created at or -- the exact language of the
9 rule -- at or near the time or from information with someone --
02:27 10 by someone with knowledge.

11 THE COURT: It appears that what she testified to was
12 she would order a screen shot and would receive a reply
13 consistent with her order or request. And she relied upon the
14 information in the request as it relates to the account of the
02:27 15 customer.

16 Now, you do make a valid point with respect to other
17 things shown in the screen shot, and in particular to any
18 reference to an inquiry by a customer. On the other hand, the
19 witness did testify that relationship managers in the U.S. would
02:28 20 make inquiries on behalf of customers, and that she was familiar
21 with that practice as a result of her duties while in India and
22 her duties since she's been here in the United States.

23 And so I share your concern about the suggestions that
24 a customer has made a request, and how that got into the screen
02:28 25 shot, et cetera, is certainly problematic and I do have some

1 concerns as to whether or not the screen shots with that
2 information unredacted should be shown to the jury.

3 MR. KIRSCH: Your Honor, can I point out one other
4 thing with respect to these screen shots which I think is really
5 telling?
02:29

6 THE COURT: Yes.

7 MR. KIRSCH: If you look at the top of this screen
8 shot, I was reading this along -- we're looking at page 27737.
9 It says, "Inquiry by customer." And then it says, "January 3rd,
10 2006."
02:29

11 So as I was sitting here, I was thinking, well, was
12 the inquiry made on January 3rd, 2006, or is this the screen,
13 the state of the account on January 3rd, 2006?

14 And then I looked down at what the government says
15 these are deposit dates. And I see October 3rd, '06, October
16 19, '06, November 24, '06. And I am just -- it's just -- it's
17 very confusing to me. And that's -- so, I don't know -- again,
18 I don't know who -- who put in October 19th -- like you look at
19 the first one, who put in November 8th, 2006, U.S. dollars,
20 \$1 million? Or who put in November 24, 2006, \$51,251.62, and
02:30
21 what was it based on? And we will never know the answer to
22 those questions.

23 We're gonna ask the jury a week from now to guess as
24 to what that means and whether or not Dr. Ahuja should be
02:30
25 convicted of a federal criminal tax offense. That's what the

1 government wants to do. But, I mean, how -- anyway. That's why
2 803(6)(a) exists, and the government cannot meet its -- they
3 cannot meet the elements of 803(6)(a) with respect to these
4 screen shots.

02:30 5 THE COURT: Ms. Siskind?

6 MS. SISKIND: Your Honor, I misspoke. I should not
7 have said deposit dates; it's actually due dates. If you saw
8 from some of the records, the defendant would put in -- purchase
9 a CD that would mature often a year and a day from the time that
10 it was deposited. So when we're looking at a screen shot for
11 January 3rd, 2006, these are actually the dates the CDs are
12 maturing. That was my mistake. They're not the dates that
13 money was deposited. That's why they are dates in the future
14 because the CDs have not matured yet.

02:31 15 THE COURT: I did note you mentioned earlier when
16 looking at the HSBC documents, one showing a million dollar
17 deposit, that it was a maturity date.

18 MS. SISKIND: Correct, Your Honor. And the other
19 issue, I just want it to be clear with the court on what we're
02:31 20 --

21 THE COURT: Was that 28052 that you were looking at
22 earlier?

23 MS. SISKIND: 28052 is one of the examples, yes. And
24 I think in the language of that wire transfer it talks about
02:31 25 placing a CD for a year and a day, to mature a year and a day

1 later.

2 MR. WEBB: And, by the way, Your Honor, we have no
3 objection -- 28052, we have no objection to that document. That
4 document -- we have no objection to that bank statement coming
02:32 5 in evidence.

6 But still, if the government wants to redact
7 everything else from this screen shot except that one input,
8 because they can argue that it appears that that -- that that
9 particular line entry was inputted from this particular bank
02:32 10 statement, then that's one matter. But I don't think that's
11 what they're arguing. They have got page after page after page
12 of screen shot. They've got one entry. And we don't --

13 Well, anyway, we just don't know how these screen
14 shots and how this HUB information was computed.

02:32 15 The HSBC Bank statements can come in under 803(6). No
16 objection to that. They can use these. But they should not be
17 permitted to use these screen shots because they have one
18 example and then argument as to what it means with not -- with
19 testimony from not one single witness. There's gonna be nobody
02:33 20 for us to cross-examine on this issue.

21 THE COURT: I want to give some additional thought to
22 the utilization of the screen shots, so I'll withhold any ruling
23 respecting the same.

24 MR. KIRSCH: Your Honor, do you want to move on to the
02:33 25 jury issue? I'll do whatever you want to do but you had

1 suggested moving on and then we --

2 THE COURT: I think it probably would be a prudent --
3 we talked about the screen shots. There was one other --

02:33

4 MS. SISKIND: Your Honor, there was one other
5 category, and that was the accountant records.

6 THE COURT: The accountant.

7 MS. SISKIND: We could address those.

8 THE COURT: Yes, please.

02:33

9 MS. SISKIND: That would be Exhibits -- apologize,
10 Your Honor.

02:34

11 MR. KIRSCH: Your Honor, can I make a suggestion with
12 respect to those? I think they're going to call the accountant.
13 Maybe the government will agree or disagree, I'm not sure that
14 the accountant exhibits -- I think they're going to call the
15 accountant as a witness. So there may not be the foundational
16 exhibits -- issues that exist with respect to the accountant.
17 We may be able to table that for the time being.

02:34

18 There is the Santiago proffer issue which is a big
19 issue, but the accountant stuff I'm not sure is -- unless the
20 government disagrees with me.

21 MS. SISKIND: We are going to call the accountant.
22 He's going to lay the foundation for whatever layers of hearsay
23 may exist within these documents.

02:34

24 THE COURT: Well, let's move on. Let's quickly talk a
25 little bit about the jury.

1 MR. KIRSCH: Your Honor, what we've done is the
2 government and the defense have exchanged a series of e-mails
3 over the past -- we had several telephone conferences. And,
4 Your Honor, what we've done -- I hope this is helpful to the
02:35 5 court. We thought it would be helpful to the court so this is
6 what we did.

7 Last night we went through the juror questionnaires
8 basically together, and we created a list of jurors that at
9 least the defendant and the government agree should be -- should
02:35 10 not have to come in on Monday, either for cause or for hardship
11 reasons. And I have that list, and if you'd like I can go
12 through that list quickly and tell you the names --

13 THE COURT: Why don't you hand up the list.

14 MR. KIRSCH: Your Honor, can I hand you a -- I have a
02:35 15 -- it's got my handwriting on it. If you look at the names --
16 well, it's got some of my notes but --

17 THE COURT: One second. Just so that you know, you
18 are also being recorded so I ask that if you wish to be heard
19 clearly, stay near a microphone at all times.

02:35 20 MR. KIRSCH: Your Honor, I have a list, it's got some
21 of my notes on it, I can give it to you if you like, but the
22 names that are crossed off on the list are the ones that we've
23 agreed to.

24 THE COURT: Do we have numbers beside any one of them?

02:36 25 THE CLERK: No, we don't.

1 THE COURT: All right. Has the government seen that
2 list that you have?

3 MR. KIRSCH: Oh, yes. We talked about it last night
4 and we talked about it again this morning.

02:36 5 THE COURT: Just hand me the list without mentioning
6 the names.

7 MR. KIRSCH: Yes, Your Honor. And, Your Honor, you
8 can ignore the names that are circled. Those are people that we
9 think should be struck but the government doesn't agree with.
02:36 10 It's just the ones that are crossed out.

11 THE COURT: All right. I won't share that.

12 (Court peruses document.)

13 THE COURT: The ones that are circled, only the ones
14 with the lines are the ones you agree on; is that correct?

02:37 15 MR. KIRSCH: Correct, Your Honor. The ones with the
16 lines are the agreed-on ones. The circled ones are the ones
17 that we want to strike.

18 THE COURT: Okay. All right.

19 (Court peruses document.)

02:38 20 THE COURT: So I count 13.

21 MR. WEBB: Your Honor, I think there should be 10 with
22 lines through.

23 THE COURT: 10. Let me go back.

24 (Brief pause.)

02:39 25 THE COURT: I did.

1 (Brief pause.)

2 THE COURT: All right. Let me give this to the clerk.
3 And you can -- why don't you make a copy of that so that you can
4 take the names and numbers off of the list.

02:40 5 Now, the reasons the parties have concluded these
6 jurors should be stricken include what?

7 MR. KIRSCH: Your Honor, some of them -- well, I don't
8 think you want me to go through them one by one, or I will if
9 you'd like me to. But the --

02:40 10 THE COURT: Categories.

11 MR. KIRSCH: The primary, what we looked at was
12 hardship that we believed that satisfied both parties without
13 the person being brought in that they should be off.

14 THE COURT: All right.

02:40 15 MR. KIRSCH: And the second thing, Your Honor, was
16 what we believed -- I think the parties jointly believed, based
17 on the answers to the questionnaire, the person would not be
18 able to be rehabilitated and -- you know, to satisfy the fair
19 and impartial requirement. Their answers were so sort of out
02:41 20 there, I guess, that we thought that they should be clearly
21 struck without having to bring them in. So those are the
22 categories. That was the basis for our agreements.

23 THE COURT: Who is going to speak on behalf of the
24 government?

02:41 25 MS. SISKIND: I will, Your Honor.

1 THE COURT: All right. Counsel?

2 MS. SISKIND: We concur with Mr. Kirsch's assessment.
3 The reasons were hardship for some and bias for others.

02:41 4 THE COURT: Well, consistent with the practice I've
5 used in other cases of this sort where we've used juror
6 questionnaires, the court will accept the determinations of the
7 parties with regard to the eligibility of these jurors or the
8 hardship that may be suffered by these jurors if they are called
9 for service in this case and, therefore, they will be excused.

02:41 10 Now, are there other jurors as to whom there is some
11 disagreement?

12 MR. KIRSCH: Yes, Your Honor. And it's a small number
13 but there are some.

14 THE COURT: All right. Let's talk off the record.
02:42 15 I'd like to see the parties in the jury room.

16 (Proceedings continued off the record in the jury room
17 at 2:42 p.m., until 3:23 p.m., at which time the proceedings
18 were adjourned for the day.)

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WISCONSIN
3

4 I, JOHN T. SCHINDHELM, RMR, CRR, Official Court
5 Reporter for the United States District Court, Eastern District
6 of Wisconsin, do hereby certify that I reported the foregoing
7 proceedings, and that the same is true and correct in accordance
8 with my original machine shorthand notes taken at said time and
9 place.

10 Dated this 10th day of August, 2012

11 Milwaukee, Wisconsin.

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14 Official Court Reporter
United States District Court

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E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>ADMITTED</u>
	NONE		